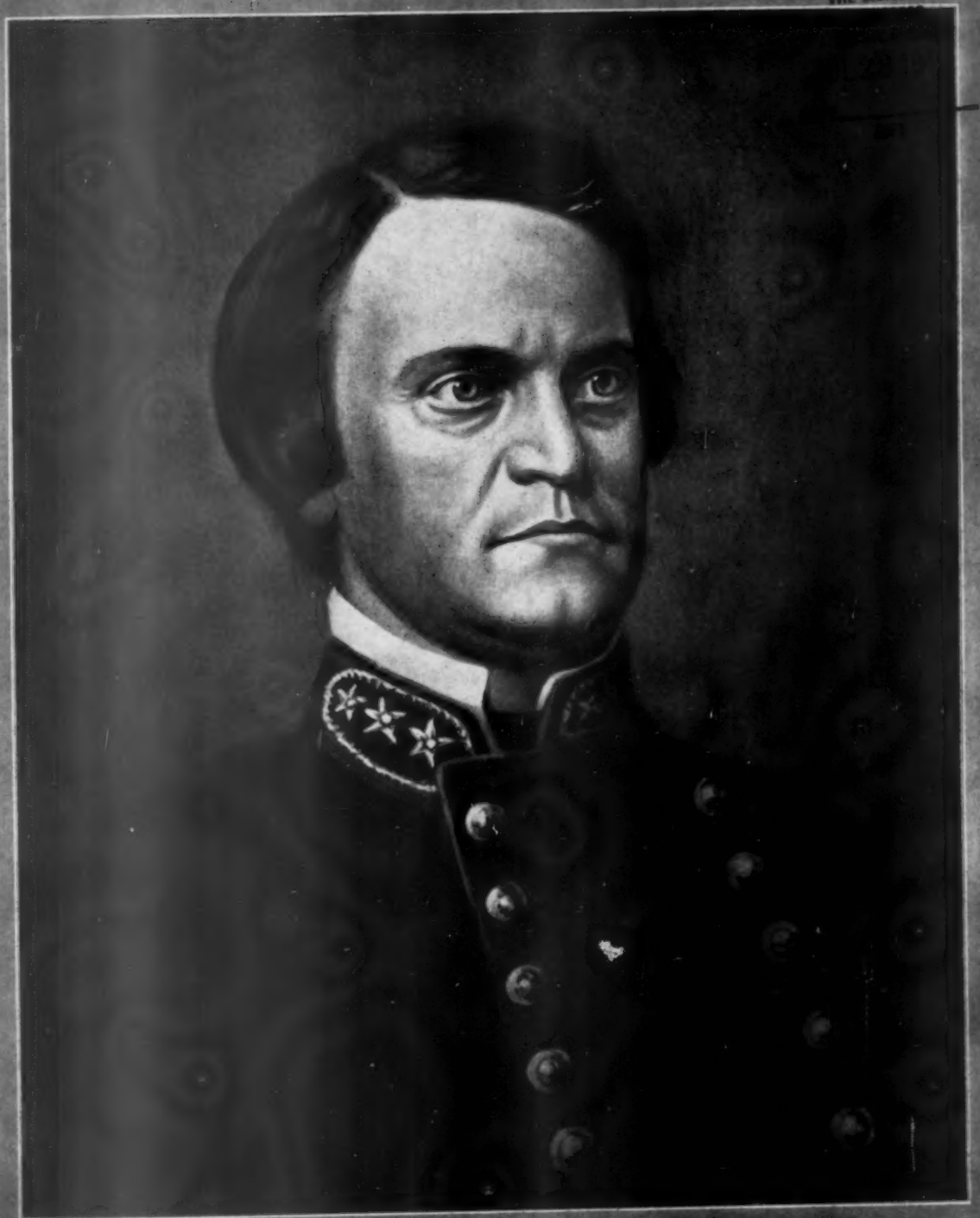

JOHN CABELL BRECKINRIDGE

AMERICAN BAR ASSOCIATION JOVRNAL

May - 1943

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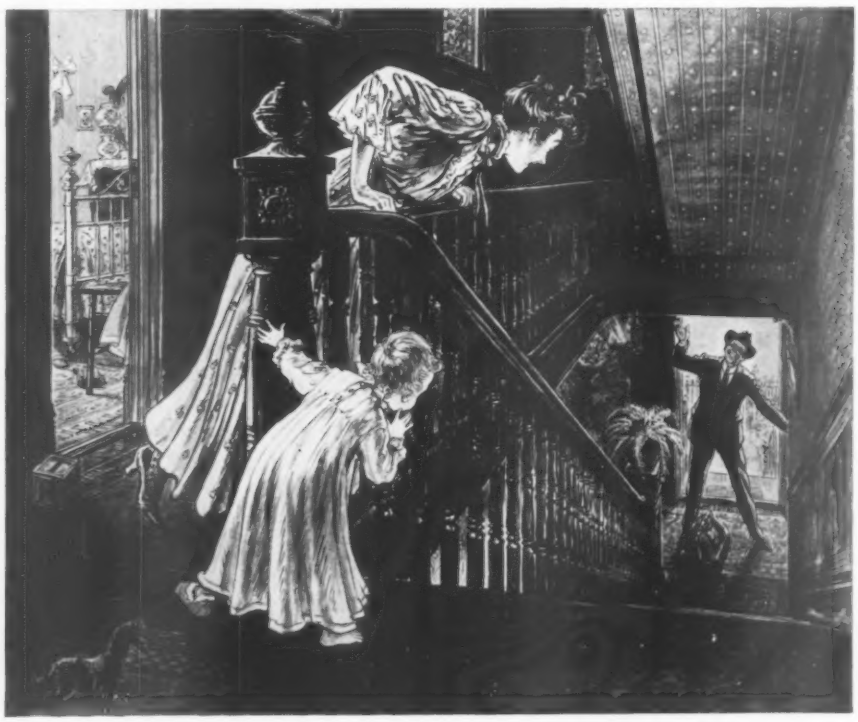

The Stranger who married my mother

MY FATHER was three thousand miles away fighting flies and fever in Panama when I was born. The first time he saw me, I was over a year old.

Dad's job as a civil engineer continued to take him to places where a woman with a small son could not go, and I knew him only as a friendly man who hugged me tighter than my uncles did.

His home-comings were usually unexpected. All at once there would be a telegram, and a few days later he would be there, a small, wiry man with deep laugh wrinkles in his face. I was a shy child, and by the time I knew father well enough to climb up on his lap, he would be leaving again for Alaska, the Philippines, or some other far-off place.

I was seven when dad came home to stay. He was sick with a tropical fever, and a year later he died at the age of 36.

My mother's tight-lipped sorrow eased after a while, and our life went on much as it had before. It was a good comfortable life. The kind that middle-class people live in a small town. And I was too young to sense my mother's loneliness.

I must have been 13 or 14 before I understood how much I owed to the father I'd scarcely known. Mother told me then. She said that dad had never made a very large salary, but that he had been mighty particular to take out enough insurance to provide for both of us comfortably and to make sure I would get a college education.

Right then it seemed to me that the insurance business must be just about the best business in the world. I guess, although you can't be sure about those things, that this was the real reason I went into insurance myself when I got out of school. Anyway, I did, and I've never been sorry.

I haven't set the world on fire, and, the way things look, I never shall. But I like my job. You see, it isn't just selling insurance. It's seeing that people in trouble have money when they need it most. It's helping my clients work out the kind of an insurance program that'll help them best.

And, while I can't say I've run across a case exactly like mother's and mine, I have had the satisfaction of seeing the insurance I sold pull some friends of mine through some mighty tough spots.

All in all, I can't think of a way I'd rather make my living than by helping my neighbors take care of their families the same way the stranger who married my mother took care of his.

* * *

MORAL: Insure in The Travelers. All forms of insurance. The Travelers Insurance Company, The Travelers Indemnity Company, The Travelers Fire Insurance Company, Hartford, Conn.

HERE is another advertisement designed to give the insurance agent the place he deserves in the minds of the public—part of that steady, consistent and persistent campaign which The Travelers Insurance Companies have been conducting in national periodicals for a dozen years. This advertisement appeared in The Saturday Evening Post in its January 30, 1943 issue.

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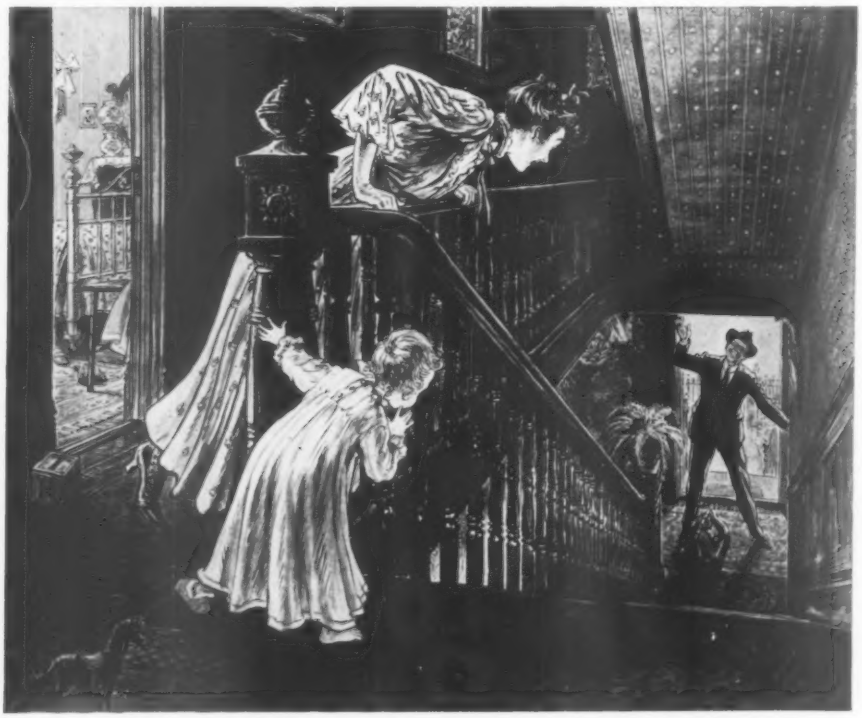

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WASHINGTON SERVICES TO MEMBERS

The Supreme Court Opinion Service will furnish at $1.00 each, copies of opinions by *airmail* as soon as available from the printer. The opinion usually may be had within 24 hours after the decision is announced. The Supreme Court's docket number and the name of the case should both be stated, if known. When these are not known, sufficient description of the case should be given so that it may be readily identified.

The Document Service is an additional service to members. It will furnish other current government documents, publications, and reports, available in Washington, on a similar basis, the base charge for each item requested being $1.00. To this will be added the cost of the document, when not obtainable free, and the cost of mailing; both of which, when known to the member, should be added to the $1.00 for each document and enclosed with the request. *Regular mail will be used in this service unless otherwise requested and extra postage added to the remittance.* It is not contemplated that formal bills will be rendered for cost of the publications and postage where these amounts being unknown, are not sent with the request; but the member will be advised of the amount due at the time the material is sent. Requests under both the above services, should be sent to the American Bar Association, 1152 National Press Building, Washington, D. C.; and all checks drawn to the Association.

There is . . .

"a time to laugh" . . .

Ecclesiates 3: 4

Another Interpretation

In Iowa a man was tried for driving while intoxicated. On the witness stand he admitted drinking some wine, that he became drunk, and was driving his automobile towards the outskirts of the city for the purpose of parking his car until he became sober. The jury found him not guilty and gave the following reason for their verdict:

"The defendant was not drunk if he was sober enough to know that he was too drunk to drive in city traffic."

Faith and Works

The captain realized that there was no hope for the sinking boat, and said:

"Is there anyone among us who can pray?"

A meek man stepped forward:

"Yes, sir; I can pray."

"Good," said the captain, "you start praying while the rest of us get life-belts on. We're one short."

A Frank Admission

Admiring friend: "I see you are now practicing law."

Answer: "No, sir. I appear to be practicing law but I am really practicing economy."

A Rule on Oral Instructions

Bacon, in his advice to Justice Hutton, says:

"You should be a light to jurors to open their eyes but not a guide to lead them by their noses."

Climbing the Ladder

Benjamin H. Brewster, Attorney General of the United States from 1816-1818, said: "A lawyer starts life by giving $500 worth of law for $5.00 and ends giving $5.00 worth for $500."

Knew Lincoln

Uncle Mose entertained visitors with stories of the Civil War. One of the visitors said:

"I understand you remember seeing Lincoln."

Uncle Mose looked sheepish.

"No suh," he replied, "I used to 'member seein' Massa Linkum but since I joined the church I don' 'member seein' him no moh."

TABLE OF CONTENTS

IN THIS ISSUE

Our Cover—This month we portray John Cabell Breckinridge, of Kentucky, and our historian, George R. Farnum gives an account of this picturesque figure — lawyer, soldier and statesman. The portrait used is a reproduction of a painting, by an unknown artist, formerly in the collection of Charles F. Gunther, of Chicago, and now owned by the Chicago Historical Society.

Post-War Planning—How to win the peace, after winning the war, was a foremost thought in the minds of the delegates. How they reacted to the problem is told in a special article, introductory to the account of the full proceedings.

House of Delegates—The mid-year meeting, which was of great importance on account of the pressure of war, is reported fully in this issue.

Nevada Divorces—The *Williams v. North Carolina* decision by the United States Supreme Court continues to attract attention from the bar of the country. An interesting socio-legal conference was held recently by the Chicago Bar Association at two successive Saturday luncheons, with the afternoon given over to discussion of the case. A report of this symposium is printed in this issue, written by the moderator of the meeting who also had the chief part in planning it.

Review of Supreme Court Decisions—A seaman injured one of his eyes while he was at work. When the ship put in at an intermediate harbor the ship's doctor sent him ashore for further medical examination. The local physician advised hospitalization on shore. The seaman returned to the ship, but could not see the ship's doctor until just before the ship was to sail. The doctor said: "Well, if you want to take a chance or a gamble on it, you can go on to the States. It don't look so bad. It can be all right." The seaman sailed with the ship, and ultimately lost the eye. The opinion in his suit against the shipowner is reviewed in this number.

Two claimants to the copyright of Chauncey Olcott's "When Irish Eyes are Smiling" went to the Supreme Court of the United States, each claiming under an assignment of the twenty-eight-year renewal term. The question was whether the right of renewal is assignable in advance. The case is reviewed in this issue.

Two Indian tribes asserted the liability of the United States for sums alleged to be due them from railroads. The Supreme Court construed the treaties and acts of Congress otherwise.

The railroad reorganization decisions in the *Milwaukee Road* and *Western Pacific* cases are reviewed in this issue.

The direct application of the Republic of Peru to the Supreme Court of the United States for release of the Peruvian government's ship *Ucayali*, libelled in a federal court in Louisiana, resulted in a duel of opinion as to the powers of the Supreme Court in the issue of writs of mandamus and prohibition. The case is reviewed in this issue. The scope of the so-called "Judges' Law" of 1925, limiting appeals to the Supreme Court and giving large powers to the Court in the control of its own docket, is fully debated by the Chief Justice (who became a member of the Court on March 2, 1925, during the short period between the passage of the "Judges' Act" and the date it went into effect) and Justice Frankfurter, the joint-author of a book on the Act and its background published two years later.

Other cases in the Supreme Court of the United States are reviewed or summarized in this issue:

The Chicago & North Western Railway proposed to raise its commutation fares; the Illinois Commerce Commission intervened, and a three-judge district court enjoined the Commission, but the Supreme Court reversed the three-judge court.

A defendant in a criminal case tried in a state court, who alleges fraud on the part of the prosecution, may apply to the trial court to have the error corrected (notwithstanding that habeas corpus is not available to him as a remedy).

A stock dividend, whether of preferred or common stock, does not constitute taxable income, if the shareholder remains in the same relative position as before the distribution.

A corporation is held to have accumulated income to an unreasonable extent, in order to avoid surtax for its stockholders.

Book Reviews—Several current books are reviewed in this issue.

War Notes—Tappan Gregory of Chicago has another sheaf of incidents relating to war and lawyers.

Junior Bar Notes—Activities of younger members are told in this issue.

ANNUAL TOPICAL INDEX

In Volume 62 of the American Bar Association Reports there was printed a complete index of subjects dealt with in the first 23 volumes of the JOURNAL. In Volume 65 of the Reports and subsequent volumes, topical indexes of Volume XXIV of the JOURNAL and of each succeeding volume, have been printed. Reprints are available at $1 each of the topical index of the first 23 volumes.

HOUSE OF DELEGATES BEGINS ACTION AS TO POST-WAR PROBLEMS FOR LAWYERS

THE subjects which evoked the most earnest consideration and debate, and the most marked differences of opinion, at the March meeting of the House of Delegates, were in relation to the steps which the House and the Association should take at this time as to study, planning and declarations of principles, as to legal aspects of the ultimate peace with victory and the reestablishment of the supremacy of law, justice, fair play, and freedom in self-government, as the bases of a law-governed world.

At all stages of the discussion, the House manifested a readiness to do its own thinking and to make its own majority decisions, without merely following the recommendations which come to it from various agencies of the Association. The debate was on a very high level of earnestness and sincerity, and sharp divergences of opinion were expressed eloquently and in friendly fashion.

After adopting the recommendations of a comprehensive report for the correlating and defining of post-war planning and studies by Sections and Committees of the Association, the House considered and acted upon various specific recommendations which had been prepared by Sections and Committees in advance of the report of the correlating committee. It was manifest throughout that the House was intensely interested in the whole subject and was ready to make the special skills of the organized lawyers fully available as to the legal aspects of post-war problems, consistent with the chartered "object" of the Association. Within that range, the majority manifestly favored the active assistance of the Bar in efforts to reestablish a law-governed world, as well as in present efforts to win the war and the peace.

In deciding what the House would and would not approve at this time, the House showed the utmost independence in making its considered decisions. The various actions taken in this field have been brought together in the following separate report of them, so that the prevailing trends of the majority action can be seen and evaluated.

Report of Special Committee as to Association's Part in Post-War Planning

The issue first made its appearance as a proposal for action when Chairman Crump called for the report of the Special Committee, which he had created and appointed, for the Correlation of Section and Committee Activities in Relation to Post-War Planning. The Committee consisted of former President Jacob M. Lashly, of Missouri; Mr. Carl B. Rix, of Wisconsin, and Mr. Edward W. Allen, of Seattle, Washington. The Committee had extensively consulted the different points of view represented in the House, and had endeavored to formulate a constructive report which would enable the utilization of the lawyers' special skills as to specific legal problems of the post-war period, and at the same time would correlate them under sufficient supervision to insure a coordinated policy within the Association's constitutional limitation to legal phases. The report of the Committee, as presented by Chairman Lashly, was followed with intense interest:

"Many agencies of the Government already are engaged in studying plans and devising tentative policies for the post-war time. The Department of State is giving attention to the multiplying international problems; the Treasury to tax, monetary and federal-state fiscal needs; the Federal Reserve System to public investment programs; the Selective Service to numerous prospective problems of demobilization, and the Department of Labor to reconversion from a wartime to a peacetime economy. Some of this preparatory work is being done pursuant to enactments of Congress, and public funds are appropriated for it. Five Resolutions are receiving the consideration of the Senate, and a sixth has been adopted, providing in one way or another for the study of post-war conditions and problems, in order to advance the preparation of the Senate for the future consideration of treaties of peace or such other forms as the ultimate settlement of the belligerency status may take.

Other Organizations Are Already at Work

"It is reported that as many as 130 private organizations or occupational groups are engaged in speculative planning for the post-war period, with the general idea of challenging the interest and focusing the attention of the public upon outlines of reconstruction which shall be useful at the close of hostilities, and especially so, should the end of the wars come with a certain suddenness, or as the result of the collapse or surrender of the enemy.

"It is the opinion of your Committee that the political, social and economic aspects of these developing subjects and problems are foreign to the objects of the organized Bar, even though many men and women of the profession in their individual capacities as citizens will feel free to engage in their study and attempted solution.

"This would not be so with respect to those phases of post-war plans or conditions which involve constitutional or legal systems or questions, or the administration of justice. This is the domain in which the training, experience and special skills of lawyers enable them to study and work to better effect and with greater capacity for service to the public and to the country than could be expected from any other persons or groups. It should be conceded that these special skills, that this training and experience, are not called out either in the planning or making of war. The professions which are called up for war service are the soldiers, doctors, nurses and engineers. It is their day. It is their time of greatest achievement and supreme responsibility. Contriving methods of order, interpreting constitutional authority and devising constructive means and ways to adjust the lives of groups and peoples to conditions of peace, and life under civil law, furnish the great opportunity, and the paramount duty, of the Bar.

"President Armstrong in his challenging annual address of last year said:

" 'The problems which will be posed by the necessity of establishing a durable peace and a stable world order after the war will call for the exercise upon the part of the Bar of all the potential qualities which it possesses. . . . These problems must be thoroughly studied, for many of them will be novel and some will involve fundamental constitutional questions. They must be explained to the people, for in some instances at least it is likely that the wise course will be one which will run counter to the instinct of the uninformed.'

"Due to these and other reasons, some Section and Committee work already has begun and dispositions are being made for further organizational approach to the field by lawyer groups within and without this Association. The appearance of some tentative plans in the published Interim War Report submitted to this meeting and the general expectation that questions of post-war planning might come to the floor of the meeting from various sources, brought up by interested members of the Association, was the occasion of the appointment of your Committee by the Chairman of the House.

"With the view to informing itself as fully as possible, your Committee invited the Section and Committee chairmen to prepare and informally submit to it any suggestions, ideas or plans for study which they were contemplating, dealing with post-war conditions. In this way your Committee has had the advantage of the reports or informal suggestions of the Sections of International and Comparative Law, Municipal Law, Taxation, and Mineral Law and the Committees on the Economic Condition of the Bar, Improving the Administration of Justice, Courts and Wartime Social Protection, American Citizenship, Public Information Program, and a number of personal and individual suggestions and expressions of view.

Coordination, Definition, and Avoidance of Duplication Are Needed

"As might be expected, some of the recommendations and suggestions received by your Committee were duplicated by others; there were those which were in conflict and definitely at cross purposes with the objectives expressed in other recommendations.

"From only this limited contact with the subject, it seems manifest that, if the Association is to concern itself officially with post-war problems of law, or the administration of justice, it will be necessary to provide appropriate precautionary means for guiding such studies and activities within the channels of our charter and to distribute it to agencies or departments already existing or which may be provided, so as to insure a certain unity of approach and output in these important and delicate matters.

"Again, the work of one American Bar Association agency may be expected to intrude upon that of others at many points, both within the domestic and the international fields. Such instances must be discovered and the approaches from different directions must be correlated and integrated into a common stream which will represent the total Association effort.

Careful and Continuing Study Is Needed

"Your Committee ventures to remind the members of the House that the formulation, during war, of peacetime objectives relating to the administration of justice is exploratory, in a degree. Many phases of post-war planning in advance, as well as post-war building at the time, will bring up countless conflicts in doctrines and clashes of ideologies. If the organized Bar is to make significant contribution in this work, it must be through careful, continuing study. It is in the work of reconciliation, identifying and isolating controlling first principles that the influence of the Bar can be made most effective. The fundamental concepts of justice, as well as the appropriate means and agencies for its administration, always must be kept in view. To secure this result, it seems essential that the various units of the Association which are to pursue work and study in these fields must do so within the framework of the traditional structure of the Association and subject to the reviews and checks which this structure was designed to provide.

"With no idea of either limiting the scope of study or action, or of imposing a direction or duty upon any section, committee or person to take up any post-war work, your Committee only by way of example respectfully points out that the following are some of the types of subject with which the organized Bar might well concern itself:—reestablishment of practice of lawyer members in the armed forces; rehabilitation of law school faculties, student bodies and libraries; adequate facilities for furnishing legal aid to demobilized persons

without financial means; termination, relaxation and transfer of war controls exercised by administrative agencies; procedures for review of administrative action; procedures for effecting and reviewing settlements of terminated war contracts; measures for strengthening and advancing state, local and constitutional government.

International Problems Already to the Fore

"The printed report of a committee of the Section of International and Comparative Law, appearing in the current Interim War Report, discloses that that Section has already entered upon a very comprehensive study of post-war international law and legal problems. A perusal of that report and particularly certain interrogations therein directed to the House of Delegates reveals that the gentlemen composing the committee desire the approval of the parent body that they shall pursue their studies and work in the domain of international law in contemplation of the post-war period. There is evidence that other units of the Association have similarly begun to plan and work.

"It seems self-evident that the thinking and experience of trained lawyers must be made available if the new and complex problems of international law and procedure which have come about through the things which have occurred and may yet occur in the World War which we are fighting now, are to be faced squarely and adequately. The establishment of international post-war judiciary systems, the consideration of international communications and transportation, the study and comparison of Inter-American and Latin-American laws and administrative procedure—these are subjects for which someone must assume responsibility and toward which someone will be privileged to make a distinctive contribution to society.

"Your Committee recognizes the existence of a fundamental choice which must be made at the threshold of the course which it is about to recommend. There are those who contend and believe that post-war planning of any character is premature.

"Upon the other hand, it is pointed out that the lasting settlement of post-war conditions requires the crystallization of public purpose upon sound and constructive objectives before the end of the war; that the processes of education and leading which are now going on will, in all human probability, increase both in volume and effectiveness; that members of the profession and the public throughout the country are entitled to have the opinion of the organized Bar as to the merits of resolutions and measures pending in the Congress, and upon the reports of such executive agencies as may have spoken or shall hereafter proceed in any manner with any branch of post-war planning; that, in view of the great and increasing number of private organizations and people now engaged upon the subject, it seems obvious that the Bar either must offer its leadership in the legal and judicial administrative aspects of these activities or stand aside and permit the domain of its special preparation and experience to be occupied by less informed persons.

"Because it has not been willing to see this occur, your Committee has adhered to the latter view, and so now tenders to the House of Delegates the foregoing report and recommendations, for its consideration and action.

Appointment of Committee Recommended

"In order to implement the course suggested in the foregoing report, it is recommended by your Committee that the Association authorize the appointment of a special committee of three members of the Association to be known as the Post-War Work Correlation Committee, to be appointed by the President, by and with the approval of the Board of Governors. The general purpose of the committee would be, as its suggested name implies, to inform itself of the projects and plans of the various units of the Association which desire to take up for study and consideration such legal phases of post-war planning as may come within the purview of the By-Laws or authority under which they normally proceed. In order to insure an orderly compliance with this suggested procedure, it is *recommended further* that such work and planning as may be, or has already been initiated, laid out, or assigned in the post-war field be submitted to said Committee for consideration and distribution as to scope and subject, and that the committee, keeping in close contact with the president and the Board of Governors, assign and supervise the scope and progress of all such activities, so that through cooperative effort the objects of correlation and integration may be achieved while the dangers of duplication, dispersion and possible conflicts may be reduced."

Mr. Maguire Opposes the Committee's Recommendations

After Chairman Lashly moved the adoption of the Committee's recommendations, Mr. Robert F. Maguire, of Oregon, a member of the Board of Governors, spoke vigorously in opposition. He urged that "the immediate, essential problem before us is winning the war." He argued that many of the proposals which had been circulated, within the Association, as to post-war planning, "invade and occupy fields in which they have no right to speak for the lawyers of the United States," because they are sociological, economic and political problems.

Mr. Maguire appealed that the House should instruct that all post-war planning by employees and agencies of the Association be kept within the Association's chartered "object," and that the controversial, non-legal questions be left to be dealt with freely by members of the Association as individual citizens.

It was the manifest feeling of a majority of the House that Mr. Lashly's Committee had offered the framework for a handling of the

matter within prudent lines. Mr. Lashly's motion was carried by a divided vote *viva voce*.

Resolutions in the Field of International Law

At the Tuesday morning session, specific resolutions which had been prepared and submitted by Sections and Committees without the supervision of a correlating committee were taken up. Chairman Edward W. Allen, of the Section of International and Comparative Law, asked permission for the presentation of the Section's resolutions by the chairman of the Section's committee, Mr. William E. Masterson. This was granted by the House. The first resolution was:

> RESOLVED, That the American Bar Association endorses, as one of the primary war and peace objectives of the United Nations, agreement among such nations for the complete establishment and maintenance at the earliest possible moment of an effective international order among all nations based on law and the orderly administration of justice.

Mr. Benjamin Wham, of Illinois, moved as a substitute, which was seconded, the following:

> RESOLVED, That the American Bar Association endorses, as one of the primary war and peace objectives of the United Nations, the cooperation by such nations in the settlement of disputes among all nations, through law and the orderly administration of justice.

As to the Section's resolution, Secretary Knight reported that the Board of Governors recommended "that it be not approved in its present form" and that it be referred back to the Section "for further consideration, consistent with the objectives of the Association."

Notable Speeches on Association's Function on International Issues

It immediately was evident that the House was disposed to debate the issues and arrive at its own decisions. Supreme Court Justice Frederic M. Miller, of Iowa, challenged the theory that this subject "is not a proper one for discussion by the American Bar Association. If we are going to have a system of peace," he declared, "it must be a system which is based upon some scheme of international law. Therefore we must have some agency that can crystallize those principles of law, so that the nations know what the law is that they are supposed to conform to.

"If we are going to have an orderly system for the settlement of disputes we must have some international agency which can settle those disputes in a peaceful manner. If we are going to have any system of observance of the law, and observance of the settlement of those disputes, we must have an executive instrumentality that is strong enough to see that the law is enforced and that the peace is enforced. And, above all these, we must have, as indicated by the report of this Section, a system of international bill of rights or checks and balances which will guarantee that, no matter who exercises the functions of this particular agency, they will be exercised with such justice and moderation that the nations of the world will still be free and that the peoples of the world will be free and independent citizens of free and independent states."

Judge Miller spoke with deep feeling of his son in the Air Corps, and of the sons of other members of the House in the armed forces, and of men who served in the Army or Navy in World War I. "We must see to it that our boys are not let down as we were," he said. "This time we must not only win the war, but win the peace. The American Bar Association owes a duty of leadership."

Mr. Hay Champions Committee's Recommendations

Judge Miller's plea made a marked impression, and the debate continued on a high level of earnest eloquence. Mr. Charles M. Hay, State Delegate from Missouri, supported all of the Committee's recommendations.

"In the first resolution," he said, "we are asked to declare that this body of American lawyers is in favor of an international order based on law. That is all.

"The second resolution (and I think, for clarity, we should refer to that) asks this body of American lawyers, whose chief function is the administration of justice, to declare themselves in favor of international courts of justice.

"The third resolution asks this body of American lawyers who are the chief exponents, champions and guardians of the Bill of Rights to declare itself in favor of a bill of rights applicable, I construe it, to all mankind.

"Is it possible, is it thinkable, that at this hour of world chaos and threat of never-ending world anarchy, the American lawyers, whose sons are on the far-flung battlefronts of the world, are not willing to go so far as to adopt a declaration in favor of agreements among the nations for the establishment of an international order based on law? Is it possible, is it thinkable, that a body of responsible American lawyers, when presented with this resolution, should fail to declare themselves in favor of the establishment of international courts of justice?

"We all had dreams of world peace and world order, but another night has come. The sons of the veterans of World War I are the soldiers of World War II; and if we fail in our thinking, in our resolution, in our capacity for leadership, then indeed will the sons of the veterans of World War II be the soldiers of World War III."

Committee Accepts the Amendment but the House Does Not

Chairman Allen of the International Law Section stated that the Committee had no objection to Mr. Wham's amendment. A rising vote was called for on the amendment. Before it was announced, Mr. Hay obtained leave to change his vote, so as to be recorded for the resolution, for the purpose of moving to reconsider. The vote of the House was 66 for and 47 against the amendment.

Mr. Hay immediately made a motion to reconsider the vote. Mr. W. E. Stanley, of Kansas, sup-

ported the recommendation of the Board of Governors. "This committee has initiated something most worth while, most far-reaching," he said, "but before it becomes the declaration for all time of this Association, I want to see the best minds and the best brains that can be pulled in from every part of this Association bring before us a declaration that will last for all time and be fundamental."

Mr. Henry I. Quinn, of the District of Columbia, earnestly advocated the Section's resolution. "It does not favor any particular form of international order," he said. "It favors an international order based on law and peace and justice. The amendment would take the very heart out of the Section's resolution."

Mr. William R. Vallance, also of the District of Columbia, opposed referring the resolution back to the Section. "We have spent hours working on it," he said. "What is the use of our Sections and Committees working, if in five minutes you throw it out of the window?"

Amendment Is Rejected but Another Motion Is Made

Mr. Wham closed the debate in support of his amendment. He said that he favored a world court and the settlement of disputes between nations, as proposed in the second resolution, but the first resolution "is not within the chartered 'object' of this Association." Mr. Hay closed the debate for the opposition to the amendment.

The motion to reconsider the vote on the amendment was then adopted. Mr. Wham's amendment was again put to a vote. This time it was defeated by the House.

Ex-Judge Floyd Thompson, of Illinois, declared that the House should do its own thinking on the question. "No issue of repudiating the authors of the resolution should have been raised. Declaring for 'an effective international order among all nations' is something quite vague to me." Accordingly Judge Thompson moved as a substitute:

"That we approve in principle the object stated in the resolution as submitted by the Committee, and that the subject be re-referred to the Committee, with the suggestion that they make further study and formulate a declaration of principle to be submitted to the House of Delegates at its next meeting."

Mr. Robert R. Milam, of Florida, made a notable speech against the motion to defer. "We are not considering this subject for the first time," he said. "Every one of us has spent troubled hours in thinking about this very thing. Those of us who went through the last war saw somewhere the failure of a mission.

"We want an effective international order. Why is that not within the objects of this Association? The practice of law is simply the enunciation of general principles. Of what good is the enunciation of principles if we do not implement those principles, if we do not provide the machinery for their enforcement? So, when we speak of some order to implement the general principles, it seems to me to be precisely within the objects of this Association. That is what I know as the administration of law.

"We do not need any referral of this resolution. We have done and can do our own thinking on it. Now is the time to act on it and to pass it."

Chairman Allen said that his Section was concerned principally with getting an endorsement of international cooperation. He thought that the resolution should be adopted now, not referred.

Ex-Judge Thompson's Substitute Is Rejected

The substitute motion offered by Ex-Judge Thompson was then put to a vote, and was defeated. Mr. Stanley, of Kansas, then moved, as a further amendment, that the word "an" be stricken from the fifth line of the resolution, so that the resolution would endorse ". . . the complete establishment and maintenance at the earliest possible moment of effective international order. . . ."

This amendment was defeated also. The resolution as reported by the Section accordingly prevailed.

Resolution Favoring International Courts of Justice Is Adopted

Chairman Allen then moved the Section's second resolution, as follows:

> RESOLVED, That the House of Delegates directs the Section of International and Comparative Law to study and report to this House an adequate post-war judicial system of permanent international courts which will provide for an accessible and continuous administration of justice.

Mr. Charles M. Lyman, of Connecticut, said that the House "ought not to go hastily into assuming that this resolution necessarily follows from our approval of the first one. The resolution as it stands ought to be rejected. It is a very vital mistake if we try to lay down a blueprint now of just what we want. Lawyers should learn the lesson of experience from what happened in 1919. We are still at the stage of study and open discussion and are not ready to say 'this is just what we want and should have.' "

The Board of Governors had recommended approval of this resolution. It was adopted by a majority vote of the House.

Resolution as to an International Bill of Rights Is Adopted

Mr. Allen then moved the Section's third resolution:

> RESOLVED, That the House of Delegates directs the Section of International and Comparative Law to study and report to this House the fundamental principles, including a bill of rights, which are constitutional in character and which should be generally acceptable as a minimum for the preservation of international order and justice under law.

This was adopted by the House, despite a recommendation by the Board of Governors that it be referred to the Section for further study. A further resolution from the Section was also adopted, contrary

to a recommendation by the Board of Governors:

> RESOLVED, That a copy of the three foregoing resolutions be sent to the President of the United States, the Senate, the House of Representatives, the Secretary of State, and to all bar associations affiliated with the American Bar Association.

On a different subject, Mr. Allen offered the following resolution from the Section:

> RESOLVED, That the House of Delegates directs the Section of International and Comparative Law to study and report to this House principles which it may be desirable to incorporate into an appropriate treaty or treaties with the United Nations, and ultimately with all nations, to the end that the fisheries of the world may be conserved, and that the general principles recognizing acquired, historic, regional fishing rights and interests based upon custom and practice will be duly established; be it
>
> FURTHER RESOLVED, That a copy of this resolution be forwarded to the Secretary of State and Secretary of the Interior.

Despite a recommendation by the Board of Governors for referral back to the Section, the House adopted this resolution.

Resolution as to Punishment of War Criminals Is Modified

Also for the Section, Chairman Allen moved the following resolution:

> WHEREAS, The Hague Conventions and the acknowledged rules of Land and Naval Warfare prohibit treacherous and wanton action by belligerents; and
>
> WHEREAS, It has been repeatedly charged in the public press and by formal documents that these laws have been violated by Germany and its allies; and
>
> WHEREAS, These offenses, if established, should not be allowed to go unpunished; be it
>
> RESOLVED, That the House of Delegates directs the Section of International and Comparative Law to study proposals for the punishment of those responsible for such acts and submit a report thereon with recommendations concerning action, if any, that the American Bar Association should take with regard to the punishment of war criminals.

The Board of Governors recommended "that the first 'whereas' be included and approved; that the second and third 'whereases' be omitted, and that the resolution be revamped; so that the 'whereas,' or preamble, and the resolution will read as follows:

> WHEREAS, The Hague Conventions and the acknowledged rules of Land and Naval Warfare prohibit treacherous and wanton action by belligerents; be it
>
> RESOLVED, That the House of Delegates directs the Section of International and Comparative Law and such other sections and committees as the House of Delegates may determine, to study proposals as to procedures relating to the punishment of those who have violated the Hague Conventions and the acknowledged rules of Land and Naval Warfare and report to the House with recommendations.

The Section declined to accept this substitute. The matter was debated by Messrs. William R. Vallance, of the District of Columbia; Joseph W. Planck, of Michigan; and Robert F. Maguire, of Oregon, who moved that the substitute resolution submitted by the Board of Governors be adopted. This motion was adopted by vote of the House.

This completed the consideration and action in the field of study and planning as to legal aspects of the post-war peace.

JOHN T. VANCE

JOHN T. VANCE, law librarian of Congress, died after an operation on Sunday, April 11. He was fifty-nine years of age. Born in Lexington, Kentucky, Dr. Vance received his first degree in law from the University of Michigan, later the doctorate of juridical science from the Catholic University of America and in recent years honorary degrees from both Michigan and Transylvania College. He practiced law in Kentucky, in Santo Domingo, where he acquired a lasting interest in Hispanic-American law and comparative law, and for a few years in Washington, D. C. In 1924 he was appointed law librarian of Congress. During his incumbency he was a member of many delegations to international conventions including the Bibliographical Congress at Rome in 1929, the second Congress of Comparative Law at The Hague in 1937 and the first Inter-American Bar Association Conference at Havana in 1941. Member of many learned societies, among them the American Society of International Law, the American Law Institute, the American Foreign Law Association, the Société de Legislation Comparée, the Bibliographical Society of America, he served as president of the Association of American Law Libraries and as chairman of the American Bar Association's Section on International and Comparative Law. He was the author of *The Background of Hispanic American Law* (1936) and of many articles and papers in legal and bibliographical journals. Shortly before his death he had returned from the last of a series of extended trips through South and Central America, undertaken under the auspices of the Office of the Coordinator of Inter-American Affairs, the purpose of which was to deepen the friendly ties between American and South American law schools, law libraries and bar associations—a task for which his kind and genial nature, his special knowledge and his wide acquaintance among Spanish-American lawyers particularly fitted him.

It is as law librarian of Congress, however, that Dr. Vance will be best remembered. He was tireless in reminding Congress of the importance of a national repository of legal materials and his efforts were crowned by a renewed interest in the library which ultimately took the form of substantial increases in its appropriation. The law library expanded tremendously during his almost twenty years as librarian—merely to mention that 300,000 volumes were added during the decade 1930-1940 will give some idea of its growth. That it is today a magnificent collection of foreign legislation and jurisprudence and is almost unrivalled in the field of Anglo-American law is the result of his patient and careful inquiries and purchases in the markets of the world and his steady interest in the law and law books of all countries. Already, with the destruction of rare and irreplaceable volumes in Europe and elsewhere, the importance of his plans for the Law Library of Congress can be understood. That he was able to bring them so close to completion is something for which legal scholars and lawyers of all time will be grateful.

Washington, D. C. S. E. THORNE

HOUSE OF DELEGATES MID-YEAR MEETING

First Session

NORMAL attendance and hearty interest marked the convening of the House, for a session devoted largely to reports and plans for the Association's contribution to the war efforts on the home front. President Morris gave a graphic and objective report of the status of Association activities and problems at mid-year; and the House heartily endorsed the resumption of regional conferences, as soon as transportation restrictions no longer stand in the way. For the Committee on Coordination and Direction of War Effort, President Morris told of the expansions in organization, the nature of the things being tried and done, the problems which arise, and the need for teamwork with the state and local bar organizations and their committees. Chairman Tappan Gregory gave a trenchant report for the Committee on War Work; and the House heard informative talks by Brigadier General Llewellyn, Assistant Judge Advocate General, and by Major Blake, Chief of the Legal Assistance Branch, which dealt mainly with the things which lawyers can do to help maintain the morale and fighting spirit of the armed forces. The emphasis throughout the session was on specific things for lawyers to help do.

THE opening session of the mid-year meeting of the House of Delegates was called to order in the Edgewater Beach Hotel, Chicago at 10 o'clock on Monday morning, March 29. According to custom, the President of the Association, Mr. George Maurice Morris, of Washington, D. C., was in the chair during the formal opening.

The roll call by Secretary Harry S. Knight showed 147 members of the House to be present, out of a total roster of 184. The thoroughly representative character of the House was strikingly attested by the personalities of the lawyers and judges who now comprise it, as well as by the fact that forty-seven states and the District of Columbia were directly represented by delegates chosen by their lawyers, along with the delegates from the constitutent and affiliated organizations.

The Secretary stated that the record of the last meeting of the House, held in Detroit last August, had been submitted to the members, and no corrections or changes had been asked. It therefore stood approved, in the form published in 67 A. B. A. Rep. pages 103-154.

Committee on Credentials Reports Changes in Representation

Chairman Bernard J. Myers, of Pennsylvania, reported that the Committee on Credentials and Admissions had received, examined and approved credentials for the following delegates of state and local bar associations, since the close of the Detroit meeting, each to serve for two years from that adjournment:

S. M. JOHNSTON, Alabama Bar Association
W. H. ARNOLD, Bar Association of Arkansas
FRANK B. BELCHER, The State Bar of California
LOYD WRIGHT, The State Bar of California
WILBUR F. DENIOUS, Colorado Bar Association
HAROLD E. DREW, State Bar Association of Connecticut
WILLIAM POOLE, Delaware State Bar Association
ROBERT R. MILAM, Florida State Bar Association
JOHN L. TYE, JR., Georgia Bar Association
PAUL W. HYATT, Idaho State Bar
JAMES R. NEWKIRK, The Indiana State Bar Association
CARL M. GRAY, The Indiana State Bar Association
JOHN L. VEST, Kentucky State Bar Association
FRANK H. HASKELL, Maine State Bar Association
NATHAN P. AVERY, The Massachusetts Bar Association
FRANK W. GRINNELL, The Massachusetts Bar Association
WILLIAM M. BLATT, The Law Society of Massachusetts
JOSEPH W. PLANCK, State Bar of Michigan
GEORGE E. BRAND, State Bar of Michgan
OSCAR C. HULL, State Bar of Michigan
JOHN F. RHODES, The Missouri State Bar Association
FRANK C. MANN, The Missouri State Bar Association
KENNETH TEASDALE, The Missouri State Bar Association
JULIUS J. WUERTHNER, The Montana Bar Association
PAUL E. BOSLAUGH, Nebraska State Bar Association
LESTER D. SUMMERFIELD, State Bar of Nevada
ROBERT W. UPTON, The Bar Association of the State of New Hampshire
JOSEPH ROSCH, New York State Bar Association
THOMAS D. THACHER, New York State Bar Association
LOUIS J. POISSON, The North Carolina State Bar
WILLIAM G. OWENS, State Bar Association of North Dakota
DONALD A. FINKBEINER, The Ohio State Bar Association
ANDREW S. IDDINGS, The Ohio State Bar Association
A. W. TRICE, Oklahoma Bar Association
FELIX C. DUVALL, Oklahoma Bar Association
ARTHUR H. LEWIS, The Oregon State Bar
HENRY C. HART, Rhode Island Bar Association
DWIGHT CAMPBELL, The State Bar of South Dakota
LELAND M. CUMMINGS, Utah State Bar
OSMER C. FITTS, The Vermont Bar Association

STUART B. CAMPBELL, The Virginia State Bar Association
GUY B. HAZELGROVE, Virginia State Bar
W. W. MOUNT, Washington State Bar Association
THOMAS B. JACKSON, The West Virginia Bar Association
HARRY S. HARNSBERGER, Wyoming State Bar
HARRY J. MCCLEAN, Los Angeles Bar Association
DELGER TROWBRIDGE, Bar Association of San Francisco
HARRY N. GOTTLIEB, The Chicago Bar Association
S. RALPH WARNKEN, The Bar Association of Baltimore City
NORMAN W. BINGHAM, The Bar Association of the City of Boston
FERRIS D. STONE, Detroit Bar Association
SAMUEL H. LIBERMAN, The Bar Association of St. Louis
CHARLES H. STRONG, The Association of the Bar of the City of New York
EDMUND RUFFIN BECKWITH, New York Country Lawyers Association
MURRAY M. SHOEMAKER, The Cincinnati Bar Association
HERBERT A. SPRING, The Cleveland Bar Association
JAMES H. GRAY, The Allegheny County Bar Association
WALTER B. GIBBONS, Philadelphia Bar Association
J. GLENN TURNER, The Bar Association of Dallas

Delegates Representing Affiliated Organizations of the Legal Profession

Delegates chosen by affiliated organizations of the legal profession, certified for a one-year term, were:

DAVID A. SIMMONS, The American Judicature Society
HERBERT F. GOODRICH, The American Law Institute
HARRY COLE BATES, Association of Life Insurance Counsel

Persons serving in the House in an *ex officio* capacity because each is president or chairman of an organization entitled to such representation under the Constitution of the Association, are:

CHARLES T. MCCORMICK, Association of American Law Schools
JOHN CARLISLE PRYOR, National Conference of Commissioners on Uniform State Laws
JOHN KIRKLAND CLARK, National Conference of Bar Examiners
LAURANCE M. HYDE, National Conference of Judicial Councils

THOMAS J. HERBERT, National Association of Attorneys General

National Association of Women Lawyers Is Given a Delegate

Chairman Myers reported that from time to time the National Association of Women Lawyers has applied for representation in the House as an affiliated organization of the legal profession. Heretofore that association did not have 25 per cent of its members enrolled as members of the American Bar Association. That constitutional requirement has now been met. "The Committee recommends that the application be accepted," declared Chairman Myers, for himself and for Messrs. Robert R. Milam, James P. Economos, Frank C. Haymond, Harry J. McClean and Arthur G. Powell, his associates on the Committee.

On motion, the report of the Committee was adopted by the House, without discussion or division.

Three Distinguished Members of the House Have Died Lately

Before submitting the actions of the Board of Governors, Secretary Knight announced that the following members of the House had died since the 1942 meeting:

Oliver O. Haga, Idaho, State Delegate, died March 10, 1943
Harry P. Lawther, Texas, The State Bar of Texas, died November 30, 1942
Joseph F. O'Connell, Massachusetts, State Delegate (1944), Delegate from the Bar Association of the City of Boston (1942), died December 10, 1942

Reporting briefly as to the Headquarters of the Association, the Secretary referred to the increasing difficulties as to obtaining supplies and replacing clerical personnel. Three of the four young men who have worked in Headquarters for many years have gone into the service or war industries.

The Secretary announced that as of March 16, 1943, the number of members of the Association serving in the armed forces of their country totalled 2,857.

Actions Reported by the Board of Governors

The Board of Governors chronicled the interim actions it had taken since the last meeting of the House:

Authorization to the Bill of Rights Committee to file a brief *amicus curiae* in the Supreme Court of the United States, in the case of *Barnette, et al.*, v. *West Virginia State Board of Education*.

Adoption of an Association emblem, designed by the Committee on Civilian Defense, for use on stationery, etc., in a form reproduced on this page.

Requirement that a copy of all printed and mimeographed matter issued by a Section to its members or others, or by a Committee to others than its members, be delivered to each member of the Board of Governors immediately following its publication.

Authorization of acceptance of the invitations of the Illinois State Bar Association and the Chicago Bar Association for the holding of the 1943 Annual Meeting of the Association in Chicago during the week beginning August 23.

Authorization of the appointment, by the President of the Association, of such number of delegates as he sees fit, to represent the American Bar Association at the meeting of the In-

ter-American Bar Association in Rio de Janeiro, Brazil.

Authorization of the appointment, by the President of the Association, of a member of the American Bar Association to serve on the Inter-American Bar Association's Committee on Post-War Planning, "with the understanding that such Committee member will have no authority to in any way bind the American Bar Association."

Direction that no subscription publication be launched by any Committee or Section of this Association unless such publication and the launching thereof be first approved by the Budget Committee and the Board of Governors.

Recommendation that the program of holding regional meetings of the American Bar Association be carried into effect at the earliest time when such meetings will not interfere with government restrictions on transportation.

Recommendation that the House approve various amendments of the by-laws of the Section of Insurance Law and the Section of Taxation, which had been approved and asked for by the respective Sections.

Approval of the acceptance of a grant of $11,000 from the National Safety Council, for a period to end December 1, 1943, for a promotional program aimed at the nation-wide adoption of the recommendations contained in the report of the National Committee on Traffic Law Enforcement, which were approved by the Sections of Judicial Administration and Criminal Law, the Junior Bar Conference, and the House of Delegates, in 1940; for which purpose Mr. James P. Economos was appointed full-time secretary under the grant, with an office in the Headquarters of the Association.

Authorization of the creation of a special committee of seven members which shall be concerned with the custody and management of alien property confiscated by the Office of Alien Property Custodian or other agency, such Committee to include representation of both the Section of Patent, Trade-Mark and Copyright Law and the Section of International and Comparative Law.

The above report of the Board of Governors was adopted by the House, with confirmation of the interim actions taken, excepting that action was reserved by the House on the amendments to Section by-laws, pending their reference to, and a report by, the Committee on Rules and Calendar.

Resumption of Regional Meetings Is Favored

Mr. W. Eugene Stanley, of Kansas, asked that the House consider and act on the following resolution, although within the scope of the Board of Governors' report:

> RESOLVED, That the program of holding regional meetings of the American Bar Association be carried into effect at the earliest time when such meetings will not interfere with government restriction on transportation.

Mr. Stanley reported forcefully the interest manifested in such regional meetings as have been held, and particularly described the meeting held in New York City. Because such meetings cannot be considered as helping to "shorten the war", they are at present held in abeyance. Mr. Stanley summarized the conclusions of his Committee, from the experience had, as follows:

1. The Association now has a successful pattern for future operations of the regional meeting plan, and the worthwhile character of the general idea has been demonstrated.

2. The regional meeting has been demonstrated to be an effective means of bringing the American Bar Association to the practicing lawyer in a way which permits the dues-paying member to participate and interest himself in the activities of the Association even though he is unable to attend annual meetings.

3. The unusually high attendance and participation in this first meeting, particularly by members who had never before attended a meeting of the American Bar Association, indicates that the resumption of regional meetings will be enthusiastically received in all sections of the country and will stimulate interest and membership in the Association.

4. The high percentage of members present who had never attended an annual meeting of the Association indicates that continuation of this program will give to all members of the Association opportunity of actual participation in Association activities.

Mr. Stanley's motion was thereupon adopted by the House.

President Morris Submits a Mid-Year Review of Association Work

Before turning over the gavel to the Chairman of the House, President Morris made an earnest and thoughtful review of the work thus far in this Association year.

"The current President's conception of the post", he said, "is that the less conspicuous the President makes himself and the more prominent he makes the Association, the better he serves our purposes in putting him into office.

"Further, that conception is that it is not the function of the President of this Association to seize the rostrum which we afford him and announce his solutions for the ills of the world, or even for the ills of the Nation. His job is to sell the American Bar Association and, with it, the organized bar to the public, to the members of the bar generally and even to the members of this Association.

"In that conception of duty, the President has another responsibility, and that is to encourage the work of all the agencies of the Association, and to recognize, so far as he is able, the excellences that are achieved by our committees and by the men working with our committees. There is something of a task there. There are over 250 Association, House of Delegates, Board of Governors and Section committees of this organization. He who watches over them is like he who watches over Israel; he shall never slumber nor sleep.

Functions of the Association's President Are Expounded

"Excellent work is done and gone unrecognized, frequently, in an organization like this simply because there is no one who, charged with the responsibility of giving applause to the man who does the job, happens to see or hear what the man has done. We have, however, always at the hand of the President the nudge of the Executive Secretary who is one of these persons who apparently sleeps with one eye open and with an ear to the ground. Thanks to that monitor, the President at any

This Meeting of the House of Delegates:

Received specific reports, and enabled invaluable exchange of practical experience, as to what organized lawyers can do and are doing, to help in their country's war effort

Authorized cooperation, in limited and non-controversial aspects, with OPA and other wartime agencies

Recommended a constructive program, as to wartime custody of alien property and licensing of alien patents, under procedures to assure fair hearing and judicial review

Scrutinized carefully the War Security Bill (H. R. 2087), favored it in principle, but advised amendments as needed safeguards

Examined proof-sheets of the first Manual of the Legal Aspects of Civilian Defense, prepared by the Association for the OCD; copies now available to members of the Association

Favored the resumption of regional meetings of the Association, with programs of practical help to lawyers, as soon as restrictions on transportation permit

Adopted recommendations to correlate studies by Sections and Committees for post-war planning and to keep such activities within the scope of the chartered "object" of the Association

Adopted resolution, after eloquent debates and close divisions, in favor of planning for a post-war order based on law and justice, the establishment of international tribunals of adjudication, and effective cooperation between nations to preserve peace

Adhered to the House's 1942 recommendations of practical measures to prevent the interruption of war production by strikes, absenteeism, etc.

Seated the first woman member of the House, as delegate of the National Association of Women Lawyers

Heard favorable reports as to the inception of American Bar Association Endowment, Inc., and as to work to increase general memberships and sustaining memberships

Laid on the table a motion opposing the McKellar Bill (S. 575) as to the confirmation and tenure of federal employees

Decided to hold a 1943 Annual Meeting of the Association in Chicago to begin August 23, unless transportation conditions prevent

Gave great impetus to the Association's war work, under the direction of the committees in charge

given time is much less likely to overlook his duties and pass by responsibilities.

"There is a fourth obligation of the President in this conception, and that is as a result of the contact which he has with the Bar generally as scattered throughout our country, and the contact he has with our functioning agencies, to endeavor to call to the attention of the House, and, when the House is not in session, of the Board of Governors, his conception of events which are just coming up over the horizon and which may not be as apparent to any one of us who at the moment is engaged in practice in his own community and is doing some Association job which does not give a universal and catholic point of view.

"When the current administration came into office, it announced that the principle it was going to follow was one of attack and not one of recession. Well, 'attack' is a gallant word, but I suppose no body or group ever made an attack that there weren't some of its members who were in favor of standing where they were and not making an attack and some who even favored retreat, I think, to some extent, that is true of us.

Difficulties Inherent in the New Tasks

"Problems and conditions that we have today rush up and slap you in the face. Decisions are required at a rate, owing to the condition of the country, at which we have not had to make them for a generation. Many more decisions are made by telephone and telegraph than have ever been made before, that I know of.

"Finally, there are no patterns for this sort of thing. We have never done this before, and when I say 'this' I mean the war effort of this Association. There are no fine, old precedents or statements of principle to look to. We are cutting our own patterns. We are proceeding on the cut-and-try method. We are running several courses that we probably wouldn't run on a second choice, but all the time we are doing the best we can. Anyone who has the job of trying to steer the organized Bar of this country through this war, keep it on an even keel, keep it moving, and moving fast, and yet not moving too fast and not stumbling, becomes a very humble person."

President Morris next referred to the various factors which led to the decision to hold the mid-year meeting of the House as usual, and added that he thought that "if there ever was a time in the history of the country when the representatives of the Bar ought to be called together and ought to take counsel, it is now."

As to the future, he expressed the view that "there will be adequate reason for holding the annual meeting now scheduled to begin in this city on August 23, in order that we may give attention and consideration to those very projects for furthering the morale, the enthusiasm and the activity of our people in the war effort."

Observations as to the State of the Bar Generally

President Morris then entered upon one of the most interesting aspects of his remarks, by way of

reporting his observations of "the state of the Bar generally," as he had opportunity to form impressions of the profession. "At the outset of the current Association year more emphatically than now," he said, "there was concern about the fact that the Bar had rushed to the colors directly after the attack on Pearl Harbor but had found, apparently to its astonishment, that military and naval institutions have very few places for lawyers as such.

"Apparently lawyers feel that with their education and their experience they have skills that other men do not possess. Many of them failed to consider the fact that those skills and exeriences are directed primarily at a peacetime civilization and a peace economy; and they are upset when they recognize their own qualities for leadership and apply for a commission, and are told that they will have to come up through the regular course that men of other occupations may come and will have to come, except in the few positions which are open to lawyers.

"In the Supply Services, the Judge Advocate General's Office, Ordnance, Quartermaster, Engineering Corps, and so forth, there are a few hundred positions which require the services of lawyers as such. They are concerned with contract making, negotiating and so forth. There are, of course, hundreds and even thousands of positions in this great Army of ours where lawyers' collateral experiences make them directly adaptable to positions of importance.

Physicians and Lawyers

"The lawyers around the country are concerned, although lately to a less extent, about the fact that the members of the medical profession seem to step in and be commissioned immediately. They appear to think the situations are parallel. Nothing could be more mistaken. The medical estimates for the Army, at least until recently, call for the appointment of one physician for every one hundred men. There are approximately 175,000 men and women in this country who hold licenses to practice medicine, some 5,000 less than the number who hold licenses to practice law. You can readily see what an Army and a Navy of 10,000,000 men would do to the available 175,000 physicians in this country. It would take virtually half of the physicians. The very nature of the work which the medical men perform in the Army and Navy requires commissioning them. They have the responsibility for the lives and health of the men in the service, and they step into commissions directly from private life.

"There are only a few places where that can be done, in the Army or the Navy, by a lawyer. I might go on to develop the differences between our profession and the other professions, such as the engineers, the architects, the ministry, and so forth, but I think it is unnecessary, because the matter is cooling down. Last fall the American Bar Association was appealed to by many men, with critical tones in their voices, as to what we were doing for the lawyers, in getting them commissions. There are still men who are greatly worried about the fact that students in law schools are not deferred as are students in medical schools. The argument made by those gentlemen is that the lawyers are necessary to any community because they keep the community on an even keel, and they are particularly necessary to the American community because of our constitutional concepts and the guardianship which the Bar gives to the Constitution and its principles.

"There are a great many of our people who are greatly upset because lawyers have not been recognized as essential factors in the community in the distribution of gasoline for the operation of automobiles. There are many people who are concerned because of the current phrase 'lawyers in the war are worth about a dime a dozen.' The answer to this sort of comment and this worry seems to be that some lawyers are essential in some lines of activity and some lawyers aren't, and it is necessary to examine the job that the man is doing and how well he is doing it, to decide whether or not he is an essential element in the community at the moment.

Profession of Law No Longer Overcrowded

"None of us is going to surrender the importance of the lawyers to the community generally and to the American community, but there are times when some men must walk in the front of the procession and some men must follow. There are times in which men with particular skills, the skills of warfare, the skills of engineering, the skills of shipping, and many other things, take precedence over the lawyer, but the lawyer will have his day in due course.

"Ever since our generation has been admitted to the Bar or, roughly, for that length of time, there has been alarm among the members of the Bar with the 'overcrowding' of the Bar, the surplusage of lawyers, their interference economically with one another, because there are too many of them and they are too easy to employ. That situation, at least for the first time in my lifetime, is changing. There is definitely growing in this country and already has appeared in several localities and in several lines of occupation, a shortage of lawyers. Lately we have been trying to increase the supply of lawyers, whereas a few months ago we were trying to increase the demand for them. There is no doubt that governmental offices, municipal, state and federal, are facing a dearth of lawyers, notwithstanding the cartoons about 2700 lawyers in the OPA!"

President Morris digressed at this point to depict earnestly the difficulties, and the conflicts of interests, which confront the work of that agency. In concluding, President Morris declared that—

"The opportunities for community service by lawyers have never been greater. They exhaust, and go far beyond, the limited resources of this organization in money, in men, and in facilities. The encouraging thing is that when a practical idea is put before the members of the organized Bar, they respond to it with an alacrity which we have never seen,

except in the spring of 1937, when we were all concerned with the issues as to the Supreme Court of the United States. The *pro bono publico* activity of the lawyers is getting to the point where clients are complaining because their lawyers do not have the time to look after their affairs. You all should take just pride that you are members of a profession which is making the contributions which our profession is making to the welfare of our country at this time."

The House Begins the Transaction of Business

Chairman Guy Richards Crump, of California, then took the gavel, as the House squared away for the dispatch of its calendar of business. First was the opportunity for the offering of resolutions from the floor, for reference to the Committee on Draft, consisting of Mr. Charles M. Lyman, of Connecticut, chairman; and Messrs. John Kirkland Clark, of New York, Tappan Gregory, of Illinois, William Clarke Mason, of Pennsylvania, and Francis E. Winslow, of North Carolina.

Resolutions were offered by Mr. W. E. Stanley, of Kansas, and Mr. James P. Economos, of Chicago.

The House next listened to the graphic report of the Committee on Coordination and Direction of the War Effort, as presented by President Morris.

Coordination and Direction of the Association's War Effort

For the Committee, its President-Chairman referred first to the broad jurisdiction and mandate which the House had given it, but explained that this was limited by the "object" clause of the Association's Constitution. "This explains the absence of some things which otherwise might have been done," he said.

In Detroit last August, the sum of $43,000 was made available for work under the direction of the Committee. Up to February 28, with over half of the year gone, the Committee had spent $15,165.80. "We are trying to get a maximum value out of this expenditure," said President Morris. He added that "The money which has gone into our war effort, from the private pockets of the thousands of men engaged in it, will probably far exceed any amount of money spent by the Association."

President Morris emphasized that "a great many things we thought we could do we find we cannot do. We find a great many things we can do which we had no idea of. There are constantly new operations, within the limits of the Constitution of the Association, which the Committee finds it can develop."

Structure and Direction of the Committee's Work

The report next explained the familiar pattern of the organization for the Committee's war work, as it has been developed and expanded from the initial Committee on National Defense, which started to function in 1940. "It seemed wiser to pursue the plan of working primarily through the state bar association committees and the many committees of local bar associations. Ideas are developed and disseminated, but no command goes with them. Some cities are well organized and working hard; in others there is indifference to our work, as such."

The following standing or special committees of the Association are in the divisional committee group under the "top" committee for their coordination:

War Work
Civilian Defense
Bill of Rights
Improving the Administration of Justice
American Citizenship
Labor, Employment and Social Security
Custody and Management of Alien Property

The Public Information Program has been taken over from the Junior Bar Conference, at its request. Section committees which had been integrated with the over-all tasks are:

Courts and Wartime Social Protection
Military Offenses and Jurisdiction
International Legal War Problems

"The overlapping, the duplications, the conflicts of jurisdiction, the Coordinating Committee keeps at work to iron out," declared President Morris. "Otherwise there would be loss to the Association and its war effort." He gave a number of interesting instances of work done by the Association, at the instance of or in cooperation with the Army or governmental authorities, and he especially commended the service of the Committee on War Work, headed by Mr. Tappan Gregory, of Illinois, and the Committee on Civilian Defense, of which Mr. Philip J. Wickser, of New York, is the chairman. He spoke warmly of the untiring work of his associates on the Coordinating Committee, Mr. Thomas B. Gay, of Virginia, and Mr. Wickser, and described the manner in which they are continuously on the job for the Association, night and day, wherever they are.

Specific Tasks on Which the Association Helped

As chronicled by President Morris, the Coordination Committee, through the state bar organizations on the Pacific Coast, helped to mobilize the large number of lawyers needed for counsel on the legal problems arising from the relocation of several hundred thousands of Japanese, many of whom were taken away from large and active businesses, as well as from their homes. The Committee has done all it could to help work out with the OPA some basis for meeting the needs of many lawyers for additional quantities of gasoline, to enable them to travel to and from courts and perform their duties for their clients and as officers of the courts. "In some fashion, unless the administration of justice is to break down in rural communities," he said, "some arrangement must be made to enable these lawyers to get about, in the work they are doing. We are in the midst now of arriving at a formula, which we hope will be satisfactory to everybody, and probably will be satisfactory to nobody!"

In concluding his report, President Morris made an earnest appeal that each member of the House of Delegates should, individually and through enlisting his friends, rally the necessary support actually to accomplish the things for which the members of the House vote approval.

Field Representative of the Committee Reports

President Morris had explained that the Coordinating Committee had made the experiment of sending a full-time, paid assistant into the field, in the person of Mr. Harold H. Bredell, State Delegate from Indiana, to visit state bar association meetings and personally encourage greater and more diversified activity in the state and local bar associations. Mr. Morris expressed the view that this step had justified itself as the necessary means of accelerating the war work of the organized Bar.

Mr. Bredell was introduced, to give a report of his travels, the varying degrees of activity and cooperation which he encountered, and "the small amount of the material which is actually being read by those in charge of the work in many localities." He said that he often found that state and local groups readily embraced as new ideas, on oral presentation, various suggestions and plans which had been fully explained to them in the material sent out by the Coordinating Committee.

From his observations in the field, Mr. Bredell was confident that the work is going forward and gaining momentum and effectiveness, in most localities, and that the lawyers are making and will continue to make a contribution which will hardly be surpassed by other civilian groups, except by those engaged directly in war production, transportation or agriculture.

The report of the Coordinating Committee was then, on vote, received and filed by the House.

Mr. Gregory Reports for the Committee on War Work

Chairman Crump then called on Mr. Tappan Gregory, of Illinois, to give his report for the vital Committee on War Work. Supplementing the written report, Chairman Gregory first made an appeal for practical suggestions and active personal assistance of members of the House and of the lawyers of the country. "We need them," he said. "We welcome them."

He referred to the second edition of the excellent *Manual of Law for Use by Advisory Boards for Registrants*, prepared under the leadership of Colonel Edmund Ruffin Beckwith, his predecessor, and lately distributed. He told of many specific things which the Committee has initiated or assisted, for the peace of mind and well-being of men serving in the armed forces and otherwise disturbed about business or legal problems arising as to their home affairs. He told especially of the sponsorship of "legal assistance offices" at the various camps, posts, and Army stations, as lately embodied in the directives of the Chief of Staff in Circular No. 74. "The gasoline rationing has been a real problem in carrying this out," he said. "Unless something is done to meet this special situation, civilian lawyers can hardly get to the various camps and fields, in order to help out on this legal assistance work for the men in uniform." Chairman Gregory's realistic report received close attention and evident approbation from the House.

Representatives of the Army Address the House

The calendared order of business was next suspended to present Brigadier General Fred W. Llewellyn, Assistant Judge Advocate General of the United States Army, who served with distinction as an infantry officer in World War I, was awarded the Distinguished Service Medal for his exploits in the Argonne offensive in 1918, and has since been a member of the Seattle Bar Association and the Washington State Bar Association before being recommissioned in the Army for the present war. General Llewellyn was warmly greeted, and he conveyed first the regret of General Cramer, the Judge Advocate General, that he could not be here "to express his sincere and deep appreciation of the assistance which has been rendered the Army in this emergency by the legal profession, and especially by this very Association with its affiliated state and local associations and committees throughout the country.

"My work has brought me in touch with very many instances of the fine service which has been given by or through your agencies to members of the Army in relation to their personal legal affairs," declared General Llewellyn. "As indicated by the report of your War Work Committee, you have now undertaken, in collaboration with the War Department, not only to continue that service but to expand your contribution thereto in a very outstanding and substantial manner. All of us who in a sense represent the legal profession in the military service are very proud of all that and more than grateful for your patriotic and unselfish help."

The distinguished soldier-lawyer then emphasized that whatever tends to enhance the morale and fighting spirit of the armed forces helps to win and shorten the war, and that a soldier's morale is impaired if he is left harassed by legal difficulties besetting his business, his family or his property at home. He described the work, and the selection of personnel for the Judge Advocate General's Department, which now has only about one judge advocate for every 4,000 men, instead of one for every 1,400, as formerly. The speaker referred to the new "legal assistance plan" as "orginally conceived by leading civilian members of the Bar, formulated with the able cooperation of the President of this Association," and now endorsed and supported heartily by the Association, as well as by the War Department, through its Circular No. 74 of March 16, 1943.

In connection with his visit to the House, General Llewellyn was warmly greeted by many friends and other members of the Bar, some of them in uniform. The next speaker was Major Milton J. Blake, member of the Denver Bar Association, now Chief of the Legal Assistance Branch in the Office of the Judge Advocate General. He has had much to do with the handling of soldiers' wills, powers of attorney, and personal legal problems, during the war, as well as the preparation and proposed administration of Circular No. 74, for which he described the plans in

detail, after copies of the circular had been distributed to members of the House. The active relationship of the American Bar Association and its state and local committees, to the whole project, was explained, as well as the opportunity and need for the participation of lawyers who live near Army camps, fields and stations.

In response to a question by Mr. Nathan P. Avery, of Massachusetts, Major Blake stated that although Circular No. 74 relates to the Army, "a legal assistance office is open to all members of the armed forces." Chairman Tappan Gregory said that his Committee on War Work is in contact with the Navy, and hopes the Navy will set up a similar system.

A question from Mr. Walter M. Bastian, of the District of Columbia, led Major Blake to explain the military reasons why a list of all camps, posts and stations, with their locations, cannot be supplied to the bar associations.

Major Blake told Mr. Francis E. Winslow, of North Carolina, that "no one will be designated as a legal assistance officer who is not a commissioned officer," and that such officers will normally perform also their usual military duties. "In some situations, though, we may have to have several legal assistance officers working full time," said Major Blake.

At 12:40 o'clock the House recessed until 2 o'clock.

SECOND SESSION

AFTERNOON found the House absorbed in bringing together the experience of various states and localities in practical work by lawyers, in aid of the war. The Committee on Civilian Defense presented an outstanding report; Chairman Wickser stated candidly the policy and problems of assisting the legal work of governmental agencies in tasks such as rationing. He asked approval for a limited voluntary cooperation by lawyers as citizens; a definitive resolution sponsored by the Committee was adopted. The central topic of Association participation in some types of post-war planning made its appearance. A report and recommendations to correlate such activities and keep them within the constitutional "object" of the Association were approved, after debate. Reports on other phases of the Association's wartime work were received. The House declined to consider "moot" the recommendations which it made a year ago for preventing the interruption of war production by strikes and absenteeism. Hearty appreciation of the large increase in sustaining memberships, through the work of the Ways and Means Committee, was manifested.

AT the opening of the second session, held Monday afternoon, a supplemental report by Chairman Bernard J. Myers for the Committee on Credentials and Admissions recommended procedure for filling promptly the vacancy in the office of State Delegate from Idaho, to succeed the late Mr. Oliver O. Haga. Chairman Crump designated Mr. Robert F. Maguire, of Oregon, to arrange the time and place of the meeting of representatives from the Ninth Circuit, to fill the vacancy temporarily. All this was in accordance with the emergency procedure adopted by the Assembly and House at the last annual meeting. (Constitution, Article V, Section 5, as then amended.)

State Delegate Charles M. Lyman, of Connecticut, made a comprehensive and detailed statement of the way in which the War Work Committee of the Connecticut State Bar Association has organized and conducted its activities in gathering information, mobilizing forces, and rendering promptly such legal services as men in the armed forces may need in their personal affairs. Mr. Avery, of Massachusetts, expressed the hope that every state will assemble and make available similarly specific information as to what its organized lawyers have been and are doing. The report of Mr. Gregory's Committee was thereupon, by vote, received and filed.

First Woman Delegate Is Seated in the House

The House having adopted the report of its Committee on Credentials and Admissions, which recommended the admission of the National Association of Women Lawyers as an affiliated organization, the first woman to become a member of the House was thereupon formally seated. Ex-Governor John M. Slaton, of Georgia, and Secretary Harry S. Knight, of Pennsylvania, were named to join with President Morris in escorting Miss Marguerite Rawalt, of the District of Columbia, to the rostrum, where she was briefly welcomed by President Morris and acclaimed by members of the House, as she took her seat with the District of Columbia contingent.

Chairman Wickser Reports for the Committee on Civilian Defense

Former President Jacob M. Lashly, of Missouri, then gave the awaited report and recommendations of the special Committee appointed by Chairman Crump, as the House Committee for Correlation of Section and Committee Activities in Relation to Post-War Planning. This was adopted by the House, after debate. This report and discussion are chronicled elsewhere in this issue, in a separate article which significantly brings together the actions taken on various phases of this vital topic, which had been one of the principal factors in the decision to convene the House at this time.

For the Committee on Civilian Defense, Chairman Philip J. Wickser,

of New York, then presented its printed reports of activities, and commented forcefully on many of the problems and encouragements which they present. As evidence of the practical things which the Committee has been doing, Mr. Wickser referred first to the useful *Civilian Defense Manual*, prepared under the direction of the Committee "with the entire approval, amounting to enthusiasm, of the Office of Civilian Defense," which is causing it to be printed and distributed as an American Bar Association product, to the thousands of men and women engaged in civilian defense work in all parts of the country. Compilation of the *Manual* was in charge of Mr. Henry S. Fraser, of the New York State Bar. Mr. Wickser produced several page-proof copies of the *Manual*, for examination by members of the House, and announced that copies can be obtained by members of the Association, in the manner stated elsewhere in this issue.

Supplementing his detailed reports in print, Chairman Wickser appealed especially to members of the House and to other lawyers to let the Committee know "what types of work the Committee may appropriately proceed to develop. We need to know what the local associations wish to undertake. They differ as to size, impulse, resources, degree of apprehension about civilian dangers and damage. On the other hand, we must study the government's needs, the needs of the agencies, not always agreeing with them, but defining them."

Chairman Wickser declared it to be his judgment that "civilian defense, particularly in the field of rationing, is a rapidly moving floodtide. It moves forward constantly into the lives of all of the people of this country. If the lawyers want to do what they can do, they must complete a great deal of basic organizational work, for public education and guidance. Washington is moving, in many respects, very rapidly away from Washington. It is emphasizing continuously, as far as this Committee's contacts are concerned, the importance of stating problems to the fullest extent possible, in local terms and in terms of local areas. That movement has the entire support of the OCD and of most of the other agencies with which we have contact."

In order to invite expression of the views and instructions of the House, Chairman Wickser expanded frankly some of the questions which arise, as to the things which wartime agencies of the government would be glad to have the organized lawyers help to do. The Committee has had to differentiate firmly and to proffer its help only in matters which it believed would be acceptable to the House and to the rank and file of Association members. He illustrated this by citing things which he believed the lawyers could well help the OPA do in their home communities, and other things which he thought the Association could not sponsor.

Civilian Defense and the OPA

"Volunteer lawyers could not well be supplied to work alongside paid lawyers of the OPA staff; volunteer lawyers could well serve as disinterested and impartial members of OPA local panels and review boards." Mr. Wickser added that:

"We did not think we could or ought to recommend to local associations that they make available lists of lawyers or that they publicize in their organized forms or draw up panels of men who were willing to take such treble damage suits. That smells a little bit too much like a contingency fee business or a negligence or ambulance type of thing. It was naturally rejected by your Committee, and the OPA was so advised. We likewise advised the OPA that we did not see how we could take part in any investigatory procedures, go around and find out when the regulations were being violated, nor, so far as we have been able to determine up to date, that we could do much of anything about assisting the government by providing counsel for enforcement proceedings."

Lawyers and the Campaigns for Sale of War Bonds

Concerning the requests for the help of organized lawyers in the sale of War Bonds, Chairman Wickser declared that "Since this supplemental report was drawn up, we received a telegram from the Treasury Department advising that a $13,000,000,000 loan is to be floated by the Treasury Department. It asked us whether we can get in touch with the president of every state bar association and request him to get in touch with the Governor of the Federal Reserve Bank in his district.

"It is notable that the Treasury, which has the No. 1 interest and responsibility for the flotation of this loan, should turn to the American Bar Association with that kind of a request, and we shall certainly respond.

"It is important also to recall that it is absolutely necessary that this enormous loan, larger than anything which has ever been floated in this country, shall go across and go across well. Our enemies watch the map and the flow back and forth of the armies, but they also watch the way the loans go. It is very important work on the home front, in which we shall endeavor to help."

A motion was made that the report and the supplemental report of the Committee on Civilian Defense be received and approved. After Mr. Clarence W. Diver, of Illinois, had asked a question which reflected the marked interest in this "brass tacks" report of useful work, the motion was put to a vote and carried.

Lively and Useful Discussion Ensues as to Types of Work

The discussion requested by the Committee on Civilian Defense, in response to several specific questions which it propounded, then developed spontaneously, to effect the desired exchange of points of view and experience, under the differing conditions in widely separated parts of the country. This clearing house of information, on the floor of the House and outside it, added a great deal of confirmatory impressiveness to the objective reports which had been

made, and in fact proved to be ample justification for the convening of the House of Delegates at this time. The matters presented on the floor were too specific and too comprehensive to permit them to be reported in the JOURNAL, within its reduced amounts of space; but the appropriate committees will doubtless see to it that the useful ideas and experiences which were thereby developed will be made available promptly to those who are dealing with like tasks, in the states and the local communities.

Mr. Frank B. Belcher gave a graphic account of the many-phased activities of the War Work Committee of the California State Bar, in the area which naturally has been on the frontier of need for civilian defense. Emphasis has there been placed also on the need for looking after the professional interests of the lawyers who enter the armed forces. Mr. Belcher expressed the opinion that, in states such as California, the American Bar Association should deal with and through the state bar organization, and not directly with local associations, lest confusion develop.

Mr. John Kirkland Clark, of New York, told of the extensive work which has been done in Greater New York, under the leadership of a federated committee representative of the many local bar associations within the city and its five counties. He doubted "if any fixed pattern can be set up for the best type of organization under all conditions; it depends on the state and the locality." The New York State Bar Association has been proceeding energetically in the areas in which it can best function.

Colonel Edmund R. Beckwith, also of New York, first chairman of the Association's Committee on National Defense, reminded that in September of 1940 it was decided to organize the state bar associations upon a standard pattern of inclusion of men from the strong local association, and that "more than a year and a half ago every state in this country was organized on that pattern." Colonel Beckwith urged that the fact of work by the organized Bar as such be accepted and welcomed, without trying to get lawyers to work in the name of this Association, as such.

Chairman Wickser assured that his Committee "does not disturb existing organizations which are functioning. What we are after is effective results, as fast as we can get them. We have tried to follow out Mr. Beckwith's wise cautions.

Cooperation with Administrative Agencies Within Practicable Limits

"Our work involves, as a practical matter, continuous contact with the agencies in Washington, and working with them. We understand, from the attitude of this House today, that you wish us to go ahead along the lines we have indicated to you. In doing this, we are not becoming the agents of any kind of propaganda; we are not favoring or fostering bureaucracy in any shape or manner. But, gentlemen, in order to win this war, we have to find out what is to be done. We have to analyze it and get it out into the field. We cannot take a stand-offish attitude toward any agency which has been charged by the Congress, the people, and the executives, with furthering the war effort."

Mr. Maguire, of Oregon, told about services to the men in the armed forces, in the Pacific Northwest, as to the drawing of forms of wills for them, and the like.

Resolution as to Civilian Defense Work with Agencies Is Adopted

For the Committee on Draft, Chairman Charles M. Lyman reported favorably, after minor changes in phraseology, the resolution offered as to legal assistance to the administrative agencies, as follows:

Subject to statutory and regulatory authorization,

RESOLVED, That the Special Civilian Defense Committee is directed to transmit to all state and local bar associations cooperating with the American Bar Association these recommendations:

(1) That one of their executive officers or the chairman of an appropriate committee establish personal contact with the Defense Council in their locality, for the purpose, by conference, of examining and exploring ways in which the Bar may be of assistance in local civilian defense work, and of organizing action by the Bar to that end.

(2) That the Bar should endeavor to furnish voluntary assistance to the Office of Price Administration through local associations by

(a) Providing panels of lawyers from which Hearing Officers may be chosen to preside in Suspension Order Proceedings before local boards.

(b) Providing panels from which local lawyers may be chosen to pass on appeals from local boards based on claims for greater rations than allowed.

(c) Furnishing voluntary part-time assistance in

(1) Acting as legal advisers to local boards.

(2) Assisting District OPA offices in legal and administrative works in emergencies or at times of peak loads.

(3) Organizational and administrative work upon the initiation of rationing programs.

(d) Furnishing rosters of lawyers available and well fitted to serve as members of the above-named local boards and others as occasion may arise.

The recommendation of the Committee on Draft in favor of the resolution was adopted by the House, without a division.

Other Committees Present Their Reports

For the Committee on the Bill of Rights, Chairman Douglas Arant, of Alabama, commented briefly on its report, which reviewed its work but submitted no recommendations for the action of the House. The report was received and filed, as was also the report of the Committee on Improving the Administration of Justice, of which Judge John J. Parker, of North Carolina, is chairman.

Chairman James J. Robinson, now of Washington, D. C., of the Section of Criminal Law, asked that the privileges of the floor be extended to Mr. John Marshall Goldsmith, of Radford, Virginia, chairman of the Section's Committee on the Courts and Wartime Social Protection, which has been made a divisional function of the Committee on Coordination and Direction of War

Effort. This privilege was extended, on motion of Ex-Governor Slaton, of Georgia, seconded by President Morris.

Mr. Goldsmith's report narrated the comprehensive efforts, by the Surgeon General and various agencies of the government, as well as by private organizations, to develop a program for dealing adequately with the control of venereal diseases and the suppression of prostitution, because of their disabling effects on the armed forces of the United States. His report gave the detailed facts as to the need for general support of such a program.

Mr. Stuart B. Campbell, of Virginia, thereupon offered, and Mr. Douglas Arant, of Alabama, seconded, the following resolution, which was adopted by the House:

> RESOLVED, That the report on Wartime Social Protection, as printed and distributed, be approved; that the House of Delegates commend to the members of the Bar a study of the Committee's report; and that the Committee bring to the attention of state and local bar associations the legislative, judicial and administrative measures designed to control venereal disease and suppress prostitution in their respective localities.

Reports as to Public Information and American Citizenship

At the request of President Morris, the House gave unanimous consent to the presentation of the report as to the Public Information Program by Mr. Robert E. Freer, of the District of Columbia, not a member of the House or a committee chairman. This Program was launched in 1938 by the Junior Bar Conference, and was taken over by the Association last June. Mr. Freer reported that thus far it has been mainly at organizational stages.

The Program now has 58 state directors or co-directors, and 506 local directors. The director will send printed material to any lawyer interested. The report asked five questions, on which Director Freer will be glad to have the written suggestions of any member of the Association:

"What should our state directors do to effectuate cooperation of the state and local bar associations in your state?

"What additional topics should be added to those selected as stated in this report?

"What topics should receive primary attention in your community at this time?

"What are the most successful features of our program in your community?

"What are the chief inadequacies of our program in your community?"

Judge Herbert F. Goodrich, of Philadelphia, presented the report of the vital Committee on American Citizenship. He called attention to the following questions, asked at the end of the printed report, and said that the Committee needs the advice and suggestions of the members of the Association, in answer to these questions:

"(1) Are we on sound ground in the basic assumption that since naturalization is a judicial function the ceremony attending it should be carried on as a court proceeding and not a general patriotic demonstration?

"(2) Have members, in their experience with naturalization proceedings, come upon points the emphasis of which would be helpful to the committee?

"(3) Is there any special function to be performed by the organized Bar in assistance to the alien desirous of citizenship or should these matters be left to the appropriate governmental agencies, the various patriotic societies and educational organizations now functioning?

"(4) Is there any difference between the peacetime and wartime situation in this connection?"

The House Adheres to Its 1942 Action Against Strikes Interrupting War Production

Next offered was the report of the Committee on Labor, Employment and Social Security, by Mr. Richard B. Scandrett, Jr., of New York, who emphasized the acute problems of civilian manpower. Mr. Benjamin Wham, of Illinois, was recognized to ask the basis and necessity for the statement, in the third sentence of the report, as to "the problems and legislation involving the relations between employers and employees," that "It is the view of your Committee that these problems have, to a large extent, become moot for the duration of the war." Mr. Scandrett replied that the Committee had "put that in intentionally," and had tried "to put what we thought were first things first."

Former President William L. Ransom, of New York, arose to ask Chairman Scandrett: "Do I correctly understand that this Committee is not undertaking either to make any recommendations of change in, nor is it undertaking to repudiate or disavow, the actions taken by the House of Delegates on these matters of labor relations last year?

"MR. SCANDRETT: There are two answers to that question. In the first instance, the answer is: Not at this time. To the second question, the answer is: No; they are not attempting to repudiate.

"MR. RANSOM: Does this Committee regard it as still within its function and duty to continue to advocate the measures that were unanimously adopted by the House last March, designed for the prevention of stoppages or suspensions or absenteeism in connection with war production?

"MR. SCANDRETT: As the Committee said in its report, in comparison with the work of cooperation in getting lawyers connected with the war manpower problems and cooperation between the Bar and the associations of the different states and the Manpower Commission, our Committee unanimously believes, as they say in the report, that that is of more immediate importance. If there is time, and they successfully complete, which seems improbable, in the course of the next few months, the record they have already set for themselves, they will give heed to the mandates given by the Bar Association at the last meeting, unless the Bar Association, this House of Delegates, gives them instructions to discontinue the work that they are now

doing and take up the other as a primary mandate."

This led Mr. Thomas B. Gay, of Virginia, to take the floor against the retention, in the report, of its third sentence, above-quoted, which had led to the discussion. "I cannot find myself able to vote for the motion to approve the report, as I want to do," he said, "if the sentence which has been read by the chairman of the Committee remains in the report; because I do not conceive his statement of purpose, dealing with immediates presently and ultimates later on, is consistent with the notion that the matters acted upon by the House here last March have become moot. I would be hopeful that the chairman of the Committee would accept, without opposition, a motion to strike that one sentence out of the report."

Mr. Gay thereupon moved to strike out the sentence from the report. This elimination was accepted by Chairman Scandrett, for the Committee. The motion to approve the report, with the third sentence deleted therefrom, was adopted by the House.

Encouraging Report by the Committee on Ways and Means

"A model of brevity" was Chairman Crump's characterization of the supplemental report of the Committee on Ways and Means. Its chairman, Mr. Benjamin Wham, of Illinois, said that "We have considered many ways and means of raising money. I have always conferred with Mrs. Ricker and Miss Fehlandt of the Headquarters, and their advice and opinion were always very good, and kept me on safe and even tenor.

"It has been suggested that we call for donations to cover the extraordinary expenses of the Association; we have remitted a good many dues. We have thought, however, that we would stick to the more conservative method of financing. By pushing sustaining memberships, we now have 1,145 (applause) and at $25 that is equal to $28,625, and less the $8 regular dues is $19,465. They are still coming in. A number of members have voluntarily sent in money gifts, and have indicated their interest in the Association in other ways."

Hearty applause attested the grateful appreciation of the diligent and successful efforts put forth by Chairman Wham and his associates. The report was received and filed, and the second session of this meeting recessed at 5:20 o'clock until 8:30 o'clock Monday evening.

THIRD SESSION

THE evening assemblage launched quickly into earnest debate, wholly on questions of legislation and policy arising because of the war. First, a recommendation for study and report as to conflicts in jurisdiction between civil and military authorities was approved, as was a study of the law of courts martial. The War Security Act (H. R. 2087), under active consideration in the Congress, received close scrutiny and led to extended discussion. The Board of Governors recommended that the bill should be further amended before being approved in principle. The Board submitted a substitute for the motion of the Committee on Military Offenses and Jurisdiction. An amendment of the substitute was voted down, and the recommendation of the Board was adopted by the House. The new Committee on Custody and Management of Alien Property made a notable report which was received with marked interest. The recommendations submitted by Chairman Joseph W. Henderson were adopted. The important subject of enemy patents and their present use was constructively considered, but the question as to their outright confiscation was deferred.

THE third session of the House convened Monday evening, moved quickly into the consideration of some controverted measures on the calendar. Chairman Robinson, of the Section of Criminal Law, asked leave that the report of the Section's Committee on Military Offenses and Jurisdiction be presented by its chairman, Colonel William C. Rigby, of Washington, D. C., not a member of the House. This was granted.

Colonel Rigby offered the printed report of his Committee, and moved and explained briefly its first recommendation, which the Board of Governors had approved, after study:

> RESOLVED, That this Committee be directed to undertake a study and report to the next meeting of the House of Delegates upon existing statutes in the states of the United States dealing with conflicts of jurisdiction between state authorities and the federal military authorities in cases of offenses by military personnel; that such study shall be conducted with a view to proposing, for approval by the House of Delegates, additional legislation for the remedy of such existing defects, if any, which such study may disclose.

Debate as to the Law of Courts Martial

This recommendation for study and report was adopted by a vote of the House. Colonel Rigby offered the Committee's second recommendation:

> RESOLVED, That this Committee be directed to undertake a study for the information of the House of Delegates, and report to the next meeting of the House, upon the procedure in court martial trials in the Army and in the Navy of the United States.

Mr. Loyd Wright, of California, pointed out that the Attorney General already had a committee at work

on rewriting the law of courts martial. "A report six months hence will be too late," he said. He thought the American Bar Association should offer to assist now. He moved instead that such an offer of assistance be made to the Attorney General, and that such offer be publicized.

For the Committee, Colonel Rigby declined to accept the substitute. He thought the matter should be looked at, by the lawyers, from a long-run, rather than an exigent, point of view. Mr. Gay, of Virginia, called attention to the fact that, as he viewed it, Mr. Wright's substitute would empower a committee to participate in the drafting and approval of legislation on which the House would have no prior opportunity to pass, as required by the Constitution and By-Laws.

Chairman Crump sustained a point of order, made by Mr. Henry I. Quinn, of the District of Columbia, that the substitute proposed by Mr. Wright, of California, was not germane and was out of order. No appeal from this ruling was taken, and the Committee's second recommendation was adopted by the House.

Lively Debate as to Sumners Bill (H. R. 2087) for Punishment of Hostile Acts

The most animated debate of the evening session ensued when Colonel Rigby offered the Committee's third recommendation. Difficulty, if not confusion, resulted from substantial changes both in the resolution and the legislation to which it related, athough neither was before the House in a definitive form. The Committee's recommendation, as printed, was:

> RESOLVED, That the American Bar Association endorse in principle the bill entitled, "To provide for the punishment of certain hostile acts against the United States and for other purposes," and to be cited as the "War Security Act," introduced on January 14, 1943, in the United States House of Representatives by Mr. Hatton W. Sumners of Texas as number H. R. 1205, and the companion bill introduced in the United States Senate on February 4, 1943, by Senator Frederick W. Van Nuys, of Indiana.

Chairman Rigby said that, in view of what had lately taken place in the Congress, the Committee now wished its recommendation of approval in principle to relate to H. R. Bill 2087 as reported by Judge Sumners on March 4, 1943. This was, he said "almost word for word the same" as the Van Nuys bill (S. 639) before the House in the printed form, excepting for two significant changes. The text of H. R. 2087 was not before the House.

Recent Changes in the War Security Bill Are Stated Orally

The two changes made, in the Van Nuys bill (S. 639), by H. R. 2087, were orally explained by Chairman Rigby. The first change was that sub-paragraph (h) of Article 103 of the Senate bill reading: "(h) Any other act intended and reasonably adapted to further the purpose of aiding a country with which the United States is at war," was stricken out entirely.

The second change was that at the end of sub-paragraph (a) of Section 203 of the Senate bill, there was inserted this proviso: "Provided further that nothing herein contained shall be construed to modify the rules of evidence."

Chairman Rigby explained briefly the Committee's support of Judge Sumners' bill, and emphasized that his substitute form of Recommendation No. 3 related only to H. R. 2087.

Board of Governors Advises Other Changes in H. R. 2087

That the Board of Governors and the House were disposed to give careful scrutiny to the provisions of the proposed War Security Bill was confirmed when Secretary Knight reported that the Board of Governors, after study, recommended that the action of the House upon H. R. 2087 be as follows:

"That the American Bar Association endorse in principle H. R. 2087, being a bill entitled, 'A Bill to Provide for the Punishment of Certain Hostile Acts Against the United States and for Other Purposes,' when amended by striking therefrom subsection (c) of Section 101, Section 102, the words 'obstructing or otherwise by any act in violation of law interfering with' from Section 103 (d), and the words 'or belief' from Section 103 (e)."

Judge Floyd E. Thompson, of Illinois, a member of the Board of Governors, moved the adoption of the Board's recommendation, and spoke in support of it. First he explained the changes, from S. 639, which were advised by the Board of Governors.

In Section 103 (f) of S. 639, the Board had advised the elimination of the words "or misleading." This has been done in H. R. 2087. The Board advised the elimination of the last two sentences of Section 202 of S. 639. This has been done in H. R. 2087. The Board favored the addition, at the end of Section 203 (a), of the proviso read by Colonel Rigby. This has been inserted in H. R. 2087.

Ex-Judge Thompson Urges Further Amendments

Before the bill should be approved in principle, Judge Thompson urged, as did the Board of Governors, that sub-section (c) of Section 101 should be deleted from H. R. 2087. "Crime is personal," he declared. "If officers of a corporation or an association violate the law or conspire with the enemy, they ought to be punished, but the punishment should not extend to a corporation or association with which these guilty persons are connected. It seems to those of us who object to that provision of the bill that an entity, a corporation or association cannot entertain the intent which is necessary to commit the crimes that are defined in Section 103."

Judge Thompson supported also the Board's "fundamental" objection to the present form of Section 102 of H. R. 2087. "It seems to us that it is wholly contrary to the American system of justice," he declared, "that one should be compelled to be an informer, and that you must report to the FBI whenever you know or have probable cause to believe that some one has committed one of these crimes which is defined in Section

103. A lawyer advising with a client under this provision, if he became suspicious that that client was about to violate some provision of this law, would have to, under penalty, report to the FBI. A member of a family might have to do likewise. A priest who in the confessional had learned something of this character."

The Board of Governors recommended also that the words "obstructing or otherwise interfering with" should be stricken from subdivision (d), Section 103, and that the words "or belief" should be stricken from Section 103 (e) of H. R. 2087.

A Substitute Motion Is Offered by Mr. Henry I. Quinn

Mr. William Clarke Mason, of Pennsylvania, discussed the relationship of Sections 102 and 103 in H. R. 2087. Judge Thompson amplified the views of the Board of Governors. Mr. Julius J. Wuerthner, of Montana, asked a further question as to Section 102.

Mr. Henry I. Quinn, of the District of Columbia, moved to amend the Board's substitute for the original motion by striking out the proposed elimination of Section 101 (c) from H. R. 2087. He thought that a corporation might, through its officers or agents, do things violative of Section 103, and should be punishable therefor.

Dean Albert J. Harno, of Illinois, declared that the subject-matter of the legislation was of great consequence to individual citizens. He was not sure that the Board of Governors had covered all of the points on which change in H. R. 2087 was needed.

Debate and Action as to Section 101 (c) of the Bill

Former President Lashly suggested a separate vote on the various items of the recommendations of further changes in H. R. 2087, which were advised by the Board of Governors. After some parliamentary intricacies, Mr. Lashly opposed the deletion of Section 101 (c) from the bill. "Corporations should be liable for hostile acts in a time of war," he said. In this he was supported by Mr. William R. Vallance, of the District of Columbia.

Mr. Sylvester C. Smith, Jr., of New Jersey, advocated earnestly the adoption of the recommendation of the Board of Governors. He warned against "trying emotionally to protect the country" through definitions of crimes. Mr. Frank W. Grinnell, of Massachusetts, Mr. Quinn and Mr. Smith joined in a running debate, which was closed by Judge Thompson.

Board of Governors' Recommendation Prevails

The recommendation of the Board of Governors, moved by Judge Thompson, was for the deletion, from H. R. 2087, of Section 101 (c), which read as follows:

"Should the violation of any provision specified in sub-section (a) or (b) be by a corporation or association, it shall, upon conviction, be fined not more than $500,000."

Mr. Quinn demanded a vote first on his substitute motion, seconded by Mr. Vallance, to amend Section 101 (c) to read as follows:

"Should the violation of any provision specified in sub-section (a) or (b) be by a corporation or association, it shall, upon conviction, be fined not more than $500,000 and forfeit to the United States any profit made by the transaction."

On a division of the House, Mr. Quinn's substitute motion was declared lost. Ex-Judge Thompson's motion to adopt the recommendation of the Board of Governors was thereupon adopted.

Ex-Judge Thompson then moved to adopt the rest of the above-quoted recommendation of the Board of Governors as to H. R. 2087. This was carried, without further debate or division.

Mr. Henderson Reports as to the Custody and Management of Alien Property

The report of the newly created Committee on the Custody and Management of Alien Property was next made by its chairman, Mr. Joseph W. Henderson, of Pennsylvania, who first gave the background of this important subject, not yet generally understood by lawyers.

"We are acting under the First War Powers Act of 1941," said Chairman Henderson. "It states that any property or interest of any foreign country or national thereof shall vest in such agency as the President shall appoint, and upon such terms as he prescribes, the interest and the property held may be liquidated or otherwise handled. The President has set up the Alien Property Custodian's Office. The designated enemy countries are any foreign countries against which the United States has declared war or may declare war in the future.

"The term 'national' is defined by the Alien Property Custodian, who has to determine, as to nationals, that such a person is controlled by or acting for or on behalf of a designated enemy country or a person within such country, or that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country.

"This is a step far beyond any orders or legislation we have ever had before. The Alien Property Custodian may hold that the national interest of the United States requires that such person be treated as a national of a designated enemy country. Any one of us could be so designated.

Present Procedure as to Alien Property

"The present procedure in the Alien Property Custodian's Office is that a vesting order takes over the property without notice.

"The party seeking its release files a claim with the Alien Property Custodian seeking release and return of the property.

"The Alien Property Custodian appoints a board of three to examine and report.

"The Alien Property Custodian acts on the report. His action appears to be final.

"This procedure may be adequate. Our criticism may be premature, as the whole procedure is not yet in full operation. The matter of judicial review of the Alien Property Custodian's determination is unsettled.

"Under the War Act of 1917, which has not been repealed, Section 9 did and does provide for judicial review. This was often used as to the last war. But the proceedings today are under the War Powers Act of 1941, which ignores Section 9 and says nothing about judicial review. No three-men boards have as yet been appointed. The Alien Property Custodian's staff says that their position is that no review is available.

"There has been one test case, which is now pending, and a decision by Judge Bondy in the District Court of New York for the Southern District, on the thirteenth day of February. In that case, the Draeger Shipping Company, a New York corporation, engaged as custom brokers and shipping agents, had its corporate stock, belonging to American citizens, taken over by the Alien Property Custodian, had its officers removed and officers set up by the Alien Property Custodian. The company went into the district court and asked for an injunction under the Act of 1917. Judge Bondy held that the company had the right, under the 1917 Act, without going through the administrative procedure, to a judicial review to determine whether or not it is entitled to the property."

The Committee's Recommendation for Judicial Review Is Adopted

From the above-stated background, Chairman Henderson moved his Committee's first recommendation, which he said was limited to non-enemy situations, in which the Alien Property Custodian gives a hearing under his regulations:

> RESOLVED, That the Alien Property Custodian, in connection with the hearing of claims against property seized by him, in denying the relief demanded by the claimant, shall inform the claimant, or his agent or attorney, of the reason for the denial of the claim and that the same shall be made a matter of public record upon a docket kept by the Alien Property Custodian for that purpose; and
>
> RESOLVED, Further that legislation be enacted to afford the claimant the right of judicial review of a determination of the Alien Property Custodian.

Seconded by Ex-Governor Slaton, the motion was adopted without opposition.

Recommendation as to Trading in Blocked Accounts Is Adopted

Chairman Henderson explained next the intricate situation and procedures where trading with the enemy in blocked accounts is claimed to be involved. Applications for "unblocking" or license are granted or denied without statement of reasons, and "there is absolutely no judicial review." The Committee's second recommendation was as follows:

> RESOLVED, That regulations should be made by the Treasury Department that, whenever applications are made for licenses for the making of payments out of blocked funds, if the license should not be allowed as a matter of course, then prior to any denial of such an application, the applicant, his agent or attorney, shall be given opportunity for a hearing, with due and timely notice; furthermore, if after hearing an application is denied, the reason for denial shall be stated in writing to the applicant, his agent or attorney.

This recommendation was also adopted by the House, without opposition.

Important Issues as to Patents Seized by Alien Property Custodian Are Outlined

Chairman Henderson next discussed the vital subject of patents taken over by the Alien Property Custodian. Practically every patent and every patent application standing in the name of a national of an enemy or an enemy-occupied country, irrespective of nominal ownership, has been vested in the Alien Property Custodian.

The policy of seizure and use was stated by Mr. Henderson to be for two reasons: "One is for winning the war; the other is for aiding American industry. This policy distinguishes between patents of enemies and patents of non-enemies resident in enemy-occupied countries. It also distinguishes between patents with outstanding licenses to American concerns and those which are either not licensed or are licensed on a non-exclusive basis.

"Any enemy patent or patent application not exclusively licensed to American industry, the Alien Property Custodian will license on about the following basis: A $50 fee is to be paid for each patent. Licenses will be issued to any reputable American firm or individual. The licenses will be non-exclusive. They will be royalty-free. They will be for the duration of the patent. The licensee is to make an annual report to the Alien Property Custodian. They will be revoked only for their failure to live up to the agreement with the Alien Property Custodian.

"As to the non-enemy patents owned by nationals and residents of occupied countries with which the United States has diplomatic relations, the procedure will be the same as to enemy patents except the license will be royalty-free only for the duration of the war and for six months thereafter. Then the royalties will be on a reasonable basis."

The Committee Divides on Some Aspects of the New Issues as to Patents

Chairman Henderson explained that his Committee had been made up of three members from the Section of International Law and three members from the Section of Patent Law, with himself as "moderator," and that the Committee had not been unanimous as to the advisable tactics for dealing with some of the serious and and urgent issues which have arisen.

"Despite denials, the Alien Property Custodian's policy is that where non-exclusive licenses are outstanding, others will be licensed; and the matter that disturbs us most is that

(*Continued on page 294*)

JOSEPH WELLES HENDERSON

DURING the recent sessions of the House of Delegates in Chicago, the State Delegates met on March 30 and made their nominations for officers of the Association and members of the Board of Governors, to be elected at the Annual Meeting of the Association in Chicago during the week of August 23. These nominations by the State Delegates are published elsewhere in this issue. Independent nominations by petitions signed by members of the Association, pursuant to Article VIII, Section 2, of its Constitution, may be filed up to forty days before the opening of the Annual Meeting.

For the office of President for the difficult Association year which will begin with the adjournment of the 1943 Annual Meeting, the unanimous nomination of the State Delegates, one elected from each state by mail ballot of its Association members, was Mr. Joseph Welles Henderson, of Philadelphia, Pennsylvania, an active lawyer who has served the Association and the organized Bar in many capacities and has gained an exceptional familiarity with the work and the problems.

JOSEPH W. HENDERSON

A native and life-long resident of Pennsylvania, Mr. Henderson was born in Montgomery on February 6, 1890, as the son of Samuel B. and Jean (Welles) Henderson. He received his A.B. degree in 1908 and his A.M. degree in 1913, both from Bucknell University, of which he has since been a trustee for many years. In 1913 he was graduated from the Harvard Law School, was admitted to the Bar of Pennsylvania, and began the practice of law in Philadelphia.

In May of 1917 he was married to Miss Anne K. Dreisbach, of Lewisburg, Pennsylvania. They have one son, J. Welles Henderson, who is now serving in the armed forces of the United States. Their home is in Gravers Lane, Chestnut Hill, Pennsylvania.

Mr. Henderson became associated with, and in 1916 a partner of, the distinguished Mr. Francis Rawle, in the firm of Rawle and Henderson, which firm is carrying on the practice of the Rawle law offices founded in 1783 by William Rawle. Mr. Rawle was one of the best beloved of leaders of the American Bar. He was one of the founders, and the first Treasurer, of the American Bar Association, in which capacity he served from 1878 until 1902. During the same period he was also a member of its Executive Committee. In 1902 Mr. Rawle was elected as the twenty-fifth President of the Association, in which he continued active until his death in 1930. Mr. Henderson has thus brought to the work of the Association a close link to its history and traditions and a deep devotion to its long service to the legal profession.

Mr. Henderson has continued active in the general practice of law, and the name of his firm has not been changed. He has won increasing recognition in many fields of law, and has appeared as counsel in many notable cases in the state and federal courts. In 1918, he was special insurance counsel for the Alien Property Custodian.

Becoming a member of the Association in 1919, Mr. Henderson began almost immediately to attend its meetings and take an active interest in its work. He was chairman of the Membership Committee for Pennsylvania in 1924-25, member of the Committee on Admiralty Law in 1923-25 and 1929, member of various Sections and Section Committees, Pennsylvania member of the General Council in 1935, State Delegate from Pennsylvania 1936-37, member of the Board of Governors 1937-40, and Assembly Delegate since 1940. He served for three years on the Budget Committee, and his work as its Chairman did much to prepare Association finances for the stresses to which they have lately been subjected. He is a member of the Association's Committee on National Defense, now known as the Committee on War Work; and has also been a member of the Council of the Section on Legal Education since 1940 and is now its vice chairman. At the recent meeting of the House of Delegates, he gave a notably constructive report on the Custody of Alien Property; its recommendations were adopted by the House.

Mr. Henderson has also been active in the Pennsylvania Bar Association and in the Philadelphia Bar Association, in each of which he has served on many important committees, and has been chairman of the

Board of Governors of the latter association. He is a Presbyterian, a member of Phi Kappa Psi, a member of the executive committee of the Maritime Law Association, associate editor of American Maritime Cases since 1931, and is also a member of the council of the Harvard Law School Association. He was decorated as an Officer and Chevalier of the Order of Crown of Italy for legal work in connection with World War I.

Mr. Henderson enjoys the friendship and the confidence of the leaders and workers in the American Bar Association throughout the United States. Along with his active interest in the lawyers' effective assistance in the legal problems and tasks arising because of the war, his concern has been that the American Bar Association shall be of the greatest possible usefulness, along practical lines, to the average practising lawyer in his work for his clients and his community.

The Other Nominees

THE nominees for Chairman of the House of Delegates, Secretary and Treasurer, Guy Richards Crump, Harry S. Knight and John H. Voorhees, respectively, have served in these positions for a number of years and are well known to all members of the Association.

James R. Morford, nominated for member of the Board of Governors from the Third Circuit, was born in Wilmington, Delaware, August 17, 1898. He was educated at Dickinson College and George Washington University Law School, and received the degree of LL.B. from the latter in 1921. He practised law in Wilmington after his admission to the Bar in 1921 and served as Assistant City Solicitor, 1923-25; Chief Deputy Attorney General, Delaware, 1925-28; City Solicitor, Wilmington, 1935-38, and has been Attorney General of Delaware since 1939. Mr. Morford served as ensign, United States Naval Air Service, 1918-19.

William Logan Martin, nominee for the Board of Governors from the Fifth Circuit, was born in Scottsboro, Alabama, February 20, 1883. He graduated from the United States Military Academy, West Point, 1907, and received his LL.B. degree from the University of Alabama in 1908. He was admitted to the Alabama Bar that year and practised in Montgomery until 1920 and since then in Birmingham. He was commissioned major, Aviation Section, Signal Corps, United States Army in 1917 and transferred to Field Artillery in 1918 where he served until 1919.

William J. Jameson, a member of the House of Delegates since its organization, was nominated as a member of the Board of Governors from the Ninth Circuit. Born in Butte, Montana, August 8, 1898, he received his A.B. degree in 1919, his LL.B. in 1922, from the state university, and has practised in Billings since then. He has served as both secretary and president of the Montana Bar Association.

Nominations for Officers and Members of the Board of Governors of the American Bar Association

IN accordance with Article VIII, Section 2, of the Constitution, the Secretary of the American Bar Association certifies for publication in the AMERICAN BAR ASSOCIATION JOURNAL that at a meeting of the State Delegates, duly called and held at the Edgewater Beach Hotel, Chicago, Tuesday, March 30, 1943 at 9:00 o'clock A.M., the following persons were nominated for the following named offices of the Association, all to be voted upon by the House of Delegates at the annual meeting of the Association to be held in Chicago, Illinois, the week beginning August 23, 1943:

For President:	JOSEPH W. HENDERSON
For Chairman, House of Delegates:	GUY RICHARDS CRUMP
For Secretary:	HARRY S. KNIGHT
For Treasurer:	JOHN H. VOORHEES
For Members of the Board of Governors:	
Third Circuit:	JAMES R. MORFORD, Wilmington, Del.
Fifth Circuit:	WILLIAM LOGAN MARTIN, Birmington, Ala.
Ninth Circuit:	W. J. JAMESON, Billings, Mont.

HARRY S. KNIGHT
Secretary, American Bar Association
Acting as Secretary of State Delegates.

NEVADA AND NORTH CAROLINA – A SYMPOSIUM

By F. HOWARD ELDRIDGE
Of the Chicago Bar

WILLIAMS v. *North Carolina** and the extra-territorial effect of divorces under our federal system was the subject of a symposium held on March 27 and April 3, 1943, at the Chicago Bar Association under the sponsorship of its Committee on the Development of the Law.

The purpose was to give the members of the association a comprehensive presentation of the subject, including not only the existing state of the law and its historical development, but also the comparative law of other countries, the possibilities of improvement, whether by statute or otherwise, and the underlying questions of social policy and governmental expedience.

The presentation was made in two sessions, held on successive Saturday afternoons, each extending over a period of nearly three hours, and in topical outline the program was as follows:

1. The social policies involved in the governmental regulation of marriage and divorce.
2. The actual handling of divorces in the courts.
3. The bases and principles of American law dealing with extraterritorial effect to be given divorces.
4. The comparative law of other countries.
5. The possibility of a more satisfactory juristic solution of the problems.
6. Various suggested statutory solutions, including consideration of a national divorce law under constitutional amendment.
7. Questions and discussion from the floor.

In presenting this program, the Committee departed somewhat from the usual precedents for a bar association symposium by placing particular emphasis upon the necessity of a well-informed judgment upon the questions of social policy involved and by calling upon non-legal experts for assistance in that regard.

The first speaker was Dr. Arthur J. Todd, chairman of the Department of Sociology and Anthropology at Northwestern University, a distinguished scholar and practical sociologist of wide experience and recognized authority in the field of domestic relations. Dr. Todd reviewed the history of the modern doctrines regarding the interest of the state in the regulation of marriage and divorce, with particular reference to the growth of the secular control of the marital relationship and the concurrent development of the present widely divergent views as to the circumstances and conditions under which divorce and remarriage should be permitted. Dr. Todd also discussed the broad factors which a sociologist would want to take into consideration in seeking to solve by legislation the individual and social problems involved in marriage and divorce under present-day conditions of life.

Dr. Todd was followed by Ernest J. Mowrer, associate professor of Sociology at Northwestern University. Professor Mowrer, who has specialized in problems of family disorganization and domestic discord, devoted his discussion largely to the presentation of statistical studies of the operation of the various divorce laws of this country. These included detailed figures derived from an analysis of all the divorce cases filed in Cook County, Illinois, during a period of thirty-six years. In presenting his statistics, Professor Mowrer pointed out the relative effects of social custom and local opinion, as contrasted with legal sanctions, in determining the actual grounds for divorce in any given community. Professor Mowrer also gave his conclusions as to what would come to be accepted as the most desirable methods of dealing with problems of domestic discord.

Judge Harry M. Fisher, of the Circuit Court of Cook County, was then called upon to speak on the subject of the actual handling of divorces in the courts. Judge Fisher, with the benefit of some thirty years' experience on the bench, discussed the two-fold function of the court in dealing with divorce cases: first, to attempt to solve the personal marital problem of the litigants, including any children of the marriage; and second, to uphold the social policies of the state as expressed by the legislature. Judge Fisher felt that in both aspects there was room for much improvement and he suggested that if the divorce courts had the aid of trained sociologists who would make a personal inquiry and report to the judge in each case, it would be a step in the right direction. Judge Fisher also suggested that where the parties are domiciled in different states, or there is a question of domicile in another state, there might well be some means provided whereby the interest of the other state could be represented in the proceedings.

With this background of social policy and practical considerations, attention was then turned to the existing law on the subject. The first speaker on that part of the program was Professor Walter Wheeler Cook, of Northwestern University, well known to the profession for his contributions to American jurisprudence and recently the author of a provocative work on *The Logical and Legal Bases of the Conflict of Laws* (Harvard University Press, 1942).

Professor Cook outlined the history of the rule in Anglo-American law that jurisdiction to divorce depends upon domicile. He pointed out that the rule originated in America where judicial divorce was in-

*Decided Dec. 21, 1942; 317 U. S. —; 87 L. ed. Adv. Ops. 189; 63 Sup. Ct. Rep. 207.

troduced by statute more than a half century before English courts were given that power, and that the adoption of the domicile rule was natural because there is no national law of divorce either in America or in the British Empire. Professor Cook then traced the development of the American rule that a wife may for purposes of a divorce have a domicile separate from that of her husband and pointed out the complexities that necessarily grew out of that development. After summarizing the law prior to the decision in *Haddock* v. *Haddock*, 201 U. S. 562 (1905), 50 L. ed. 867, he discussed that case and the *Williams* case and emphasized that the problems in the two cases were not identical and that in his opinion the actual holdings in both cases were correct and could be reconciled. Professor Cook also suggested that some of the undesirable results of the present state of the law might be avoided if the marital relationship were treated as a group of rights and obligations separately terminable under different requirements of domicile and due process appropriate to each. Finally, Professor Cook explored the possibilities of legislation. The adoption by the several states of a uniform divorce law seemed to him impracticable, and a national divorce law seemed undesirable, even if the Constitution were amended to permit it. However, Professor Cook expressed the view that many of the existing problems might be satisfactorily solved by exercise of the legislative powers granted Congress under the full faith and credit clause of the Constitution.

The final speaker was Professor Max Rheinstein, of the University of Chicago Law School. Prior to coming to America in 1933, Professor Rheinstein had been a member of the faculties of the University of Munich and the University of Berlin and also on the research staff of the Kaiser Wilhelm Institute of Comparative Law. At the University of Chicago he has devoted himself to research and teaching in the fields of comparative law and conflict of laws.

Professor Rheinstein presented a survey of the laws of marriage and divorce in other countries, in the course of which he pointed out that many of our problems as to the extraterritorial effect to be given divorces do not exist in jurisdictions which adhere to the more usual doctrine that nationality determines jurisdiction for divorce and that a wife cannot have a nationality or domicile separate from that of her husband. As to the possibility of improvement in our law, Professor Rheinstein emphasized that fundamentally most of our problems are due to differing religious and moral convictions as to the nature and obligations of marriage, and he stated his belief that it would be both impracticable and undesirable to attempt to impose upon the entire nation the consequences of views, whether liberal or strict, which were not universally held. He also expressed the opinion that the *Williams* case did not make much change in the previous state of the law, if regard be had to the actual situations in which the validity of foreign divorces and marriages was previously recognized by most of the states. However, Professor Rheinstein joined with Professor Cook in the suggestion that many of the undesirable consequences of the unqualified application of the doctrine of the *Williams* case would be avoided if it were held that the courts of the domicile of either party could terminate the marital relationship insofar as the right of remarriage of the domiciliary was concerned, but that the other party, and the state of his or her domicile, should be given greater consideration in determining whether the decree of divorce would have any further effects upon the marital rights and obligations of the parties.

The entire program was in the nature of an experiment to determine whether that type of presentation of current problems in the development of the law would be welcomed by the members of the association. The sustained attendance at both sessions and the favorable comments of the audience seemed sufficiently encouraging to warrant planning further programs of the same character.

Iowa Symposium

THE entire current number of the *Iowa Law Review* is devoted to the law of divorce, with contributions from several scholars. In a foreword, Roscoe Pound says:

"Both the courts and the legislatures need help. The courts need the help of comprehensive legislation. The legislatures need the help of competent agencies of preparation for such legislation. In the law of divorce we have a striking case for what I have been urging for a generation, namely, a ministry of justice. A ministry of justice is needed for many subjects both in the nation and in each state. As to divorce it is needed in each state and, although the subject is not one of federal cognizance, the nation-wide problem of non-cooperation of the states and evasion of state law by resort to courts of other states, made possible by the legislation of those other states, should be a proper subject of study in a federal bureau. As Mr. Justice Cardozo put it, under our present system the legislature views 'with hasty and partial glimpses the things that should be viewed both steadily and whole.' . . .

"New starts on any large scale must come from legislation, even if they are to be developed by judicial decision. The courts are in no position to make them. As Mr. Justice Holmes put it, they can only legislate interstitially. . . . To quote again from Mr. Justice Cardozo, 'Legislatures and courts move on in proud and silent isolation. Some agency must be found to mediate between them. This task of mediation is that of a ministry of justice.' When it comes we shall have a better assurance of a satisfactory law of divorce."

JOHN CABELL BRECKINRIDGE

Lawyer, Statesman and Soldier of the Confederacy

By GEORGE R. FARNUM
of Boston
Former Assistant Attorney General of the United States

THE career of John Cabell Breckinridge was filled with intense and moving drama. The hero's entry upon the stage foreshadowed brilliant achievements. As scene followed scene, his stature grew in impressiveness and his acting gained in power. As the swift moving plot developed in baffling complexity, however, his part became more and more difficult to sustain. Finally he was overwhelmed by the climax and despoiled by fate. Defeat chilled the high spirit which had animated his work, blunted the keen ambition which had inspired his days, and destroyed the fast tempo of his life.

He was born near Lexington, Kentucky, on January 15, 1821, into one of the famous families of America. His great-grandfather, Colonel Robert Breckinridge, played a prominent role in the colonial history of Virginia. His grandfather, John Breckinridge, who had settled in Kentucky before the turn of the century, gained distinction as a lawyer and orator, and as a leader of the Democratic party of his state. He served in the United States Senate and afterwards as Jefferson's Attorney General. His father, Joseph Cabell Breckinridge, displayed marked aptitude for the law and showed great promise as a statesman. His career was cut short, however, by his early death. His uncle, Robert Jefferson Breckinridge was a man of extraordinary versatility, being at one time or another lawyer, politician, clergyman, educator and author. He presided over the Republican convention which renominated Lincoln.

Family tradition dictated Breckinridge's selection of a career. In 1841, at the age of twenty, he was admitted to the Bar and entered upon the practice of law at Frankfort, Kentucky. Yielding in a short time, however, to what was described as "that migratory feeling which leads the young men of America to look for new fields of enterprise, where success is supposed to be more readily attainable and life may be characterized with something more of spirit and adventure," he moved westward into Iowa. Here he mixed the austerities of law practice with frontier pastimes, and alternated between professional activities and hunting and fishing excursions with the Indians. Two years later, home ties prevailing, he returned to Kentucky, took unto himself a wife, and opened a law office, first at Georgetown and finally at Lexington.

While the repatriated lawyer was busy with his books and briefs, the bodies of certain Kentuckians slain at the battle of Buena Vista were brought home for burial. Breckinridge was selected to deliver the eulogy. Before a great assemblage of people, "Aided by the solemn splendor of the occasion," as it was put, he "talked himself into the Army." Commissioned Major of the 3rd Kentucky Volunteers, he marched away to war. He arrived in Mexico too late to gain any military laurels. His chief accomplishment was his able defense of General Pillow before a court martial on charges instigated by General Scott.

In 1849 he was elected to the state legislature and was launched on a political career which was to carry him far in the next twelve swift and eventful years. At the time the slavery question was showing signs of an approaching crisis. As a Democrat he opposed the emancipationists. In 1851, contrary to general expectations, he was elected to Congress over the popular Whig candidate, General Leslie Combs. At the end of a second term, deciding that his private fortunes were in need of repair, he resumed his law practice at Lexington.

The next year, however, he was back in the political arena as successful running mate of Buchanan. He was but thirty-five years of age—the youngest man to attain the vice presidency of the United States. On taking the oath, Breckinridge assured the Gentlemen of the Senate "that it shall be my constant aim to exhibit at all times, to every member of this body, the courtesy and impartiality which are due to the representatives of equal states." He kept that pledge, though the embittered feelings of the times, fanned to white heat by the Dred Scott decision and by John Brown's raid, had their stormy repercussions in the Senate.

At the convention of the southern wing of the Democratic Party at Baltimore in 1860, Breckinridge was unanimously nominated for President on the first ballot. In the election he received 72 electoral votes but he failed to carry his own state. During the sitting of the Kentucky legislature the following winter, he was elected to the Senate for the term commencing on March 1, 1861.

The relentless march of events placed Breckinridge in a dilemma of ever increasing difficulty. A Democrat of the southern wing, he believed in Calhoun's exposition of the Constitution as a compact between sovereign states. As a political corollary, he upheld in principle the right of secession. He was opposed to its exercise, however, and as late as 1860 he declared, "I am an American citizen, a Kentuckian who never did an act nor cherished a thought that was not full of devotion to the Constitution and the Union." After the election of Lincoln he was disposed to favor any compromise calculated to preserve the Union. But compromise had been tried and had proved but a temporary palliative. The crisis was

at hand. On December 20, 1860, South Carolina crossed the Rubicon with its declaration of secession, and by February 4 the Confederate States of America was launched.

On February 13 Breckinridge presided over the historic convention of the two Houses of Congress. Following the formal check of the electoral certificates he officially announced the election of Lincoln, who he had proclaimed during the campaign "represents the most obnoxious principles in issue in this canvass," adding, "I agree that his principles are clearly unconstitutional, and if the Republican Party should undertake to carry them out, they will destroy the Union." While the check was proceeding, a Southern member rose to a point of order, shouting, "Is the count of the electoral vote to proceed under menace? Shall members be required to perform a constitutional duty before the Janizaries of General Scott are withdrawn from the hall?" It was a dramatic moment, fraught with portentous possibilities. "The point is not sustained" ruled Breckinridge in a firm voice, but with what mixed emotions we can only conjecture. The tension was relaxed and the fateful count proceeded.

Just before dawn on April 12, a solitary mortar gave the ominous signal for the attack on Fort Sumter which began the war. Kentucky proclaimed its neutrality. And here was Breckinridge, a member of the national Senate, sworn to uphold the Constitution, believing in the right of the southern states to secede and strongly opposed to coercive measures against them, and representing a state which had adopted the paradoxical position of staying within the Union fold while at the same time disclaiming adherence to either side!

After the opening of the session of Congress on July 4, 1861, Breckinridge proceeded to render his position hopelessly untenable by his opposition to Lincoln's war policy. In one of his last utterances in the Senate he declared, "My opinions are my own. I am not a man to cling to the forms of office and to the emoluments of public life against my convictions and my principles." The rush of events had swept him far from those sentiments he had so eloquently proclaimed but two years before!

In September, Kentucky abandoned her neutrality when invaded by the contending armies and outlawed the Confederates. In the same month Breckinridge cast his lot with the South, fled from Kentucky to escape arrest and accepted the appointment of Brigadier General in the Confederate Armies. Shortly thereafter he was promoted to Major General. In early October the Kentucky legislature demanded his resignation from the Senate. Proclaiming that "I exchange with proud satisfaction a term of six years in the Senate of the United States for the musket of a soldier," he turned his attention to the War. The following month he was indicted for treason in the federal court at Frankfort and on December 2 the Senate voted his expulsion.

His war record has few dramatic highlights but reflects throughout brave and devoted service to the Confederacy. He was greatly respected by his men, and, considering that he was given the responsibilities of high command with practically no previous military experience, displayed surprisingly good strategic judgment and tactical skill. It was his fate to be involved in campaigns wherein the Confederates could boast of few significant successes. Among the battles in which he participated were Shiloh, Vicksburg, Baton Rouge, Murfreesboro, Chickamauga, Missionary Ridge and Cold Harbor. In 1864 he fought with Early in the Valley.

On February 4, 1865, when the setting star of the Confederacy was far down the western horizon, Breckinridge was appointed Secretary of War. Discussing the hopeless situation with a group of Confederate Senators, he said, "Our first duty, gentlemen, is to the soldiers who have been influenced by our arguments and example, and we should make any and every sacrifice to protect them." He proceeded to urge, "that the Confederacy should not be captured in fragments, that we should not disband like banditti, but that we should surrender as a government, and we will thus maintain the dignity of our cause, and secure the respect of our enemies, and the best terms for our soldiers." He concluded, "This has been a magnificent epic; in God's name, let it not terminate in a farce." Within a few weeks the Army of Northern Virginia had capitulated. As a fugitive he made his way to the Florida coast and escaped to Cuba. While in flight he encountered on the road an old country woman who informed him that a few hours before another fugitive had passed that way—Judah P. Benjamin, his cabinet colleague, who in the years to come was to rehabilitate his fortunes and earn legal laurels in a land across the sea.

Breckinridge made his way from Cuba to Canada. Here he remained for some years, except for an extended visit to Europe. When in London he called on a great lady by appointment, and was received in a darkened drawing room about the hour she was to pass on a new butler. When Breckinridge came in she greeted him briskly: "Well, my man, what was your last position?" He answered, "Madam, my last position was Secretary of War of the Confederate States of America. Before that I was a Major General in the Confederate Army. Prior to that I was Vice President of the United States."*

In 1869, with the permission of the federal government, he returned to Lexington and resumed the practice of law. From the tragic frustration of his public career this man, who was endowed with rare natural gifts, high spirits and great ambition, never recovered. His last years were quietly spent in professional activities, diversified by lucrative but uncongenial work for railroad corporations. It has been said of those days that "He seemed always to be looking backward." He died on May 17, 1875.

*I am indebted to the distinguished biographer, Douglas S. Freeman, for this anecdote.

AMERICAN BAR ASSOCIATION
JOVRNAL

General subscription price, $3 a year. Students in Law Schools, $1.50 a year. Price per copy, 25 cents.

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Murder of Prisoners of War

THE insolent disregard of accepted international law, the insane folly of the men who rule Japan, without thought of the future they are preparing for their people, serve to bring out, as in the sudden brightness of the lightning, what lies on the other side of this war that we are waging for civilization.

The House of Delegates Holds a Worth-While Meeting

THE 1943 mid-year meeting of the representative House of Delegates abundantly justified its being called together. This was not due solely to the important actions taken and the preliminary crystallization of opinion on matters on which leadership is needed while they are still in formative stages. As President Morris soundly said, "if ever there was a time when the lawyers of America need to take counsel together, this is the time."

Events justified the clarion call. Singularly, the outstanding usefulness of this meeting was not in the eloquent and earnest discussions on the floor of the House, not in the encouraging reports of specific things accomplished or under way, not in the important decisions voted as the considered judgment of the representative body on vital projects and issues of wartime America. These alone would have made the convocation well worth while.

But its greatest usefulness was in the conferences, the exchange of views and experiences, the inspiriting realization that the lawyers of America are largely mobilized and at work, on practical things which they can do to help their country in a time of war. The fact that 2,859 members of the Association were recorded as serving in the armed forces is signal proof of the patriotic zeal of lawyers as good citizens. Still more impressive was the reporting of the useful things which many thousands of lawyers are doing, as lawyers, in aid of the armed forces and in the many-sided tasks of civilians at home. The men who came to Chicago, from practically all of the states, gained from their informal conferences with their fellow-members of the House a fresh realization of the importance and effectiveness of the lawyers' contributions to the common cause.

This issue of the JOURNAL is largely a chronicle of that notable meeting. Its debates and decisions should be read and studied by every lawyer. The heartening things were the intellectual stature and robust independence of the House as a deliberative body, the straight thinking which was reflected in the utterances of members from all parts of the country, the realization that the House of Delegates has come to have many members whose ability and capacity for leadership are invaluable resources of the profession and the country, albeit they would hardly have won general recognition had no such representative body been created. As the Editor of the *Illinois Bar Journal* wrote of this meeting, the House "appears to be hitting its stride of usefulness," and all this "bodes well for the future of the American Bar Association."

Only organizations whose meetings "help to win and shorten this war" are authorized to come together, in this time of transportation stringency. This meeting under adverse conditions fully justified itself, both as to the war and the hoped-for peace. It was heartening and helpful to meet, and to be permitted to meet; it would have been deadening and depressive if the opportunity to come together had been denied or had not been availed of. The problems and the uphill tasks which beset the Association and the profession are many and most serious, but the mid-year taking stock and appraisal of work in progress will stimulate redoubled efforts.

The War and After

AT the mid-year meetings in Chicago the Board of Governors and the House of Delegates properly devoted most of their time to a study of what the Bar can do towards winning the war and towards helping to plan for the organization of the world after the war.

These topics are dynamic and explosive. About them men feel deeply. Emotions are quickly aroused. It is easy to be stampeded by a slogan. It is hard to be tolerant, to listen, and to think straight. Let it always be remembered that on this occasion the American Bar Association carried on its work, its planning, and its debate in accordance with the highest standards of free speech, with an eagerness to hear all points of view, and with a determination to find out how the lawyers of the country can best contribute to their country the unique skills, techniques, and disciplines that they have learned in the course of their professional lives.

The people of America and the peoples of most of the world yearn for a system of justice according to law. History proves that there is no other possible alternative.

The edifice of the temple of justice must be designed by lawyers. They are best fitted to be the architects. They have studied the history of the slow evolution of civilization. They have studied the growth of our legal system which seeks to regulate and control human life with all its passions, needs, conflicts, desires, and aspirations. They know that the law is not yet a perfect instrument but they believe it to be the best instrument thus far forged. Best of all, they are imbued with the fiduciary instinct which simply means that they always think in terms of the welfare of their client and in this case their client is the nation.

Most of us who attended the Chicago meeting have perhaps forgotten that the years have been slipping by. The truth is that the actual decisions will not be made by us but by our sons. They will be in the majority when they return. They have offered their lives and all too many have given their lives.

They have faced the torture and the anguish. They have the right to speak and before them we must be humble.

And we are apt to forget that many of our sons are themselves married and have their own sons and daughters. They are as anxious about their children as we are about our children.

The time is not yet ripe for us to try to announce a program. But this is the time for us to study the speeches, articles, essays, and editorials that impress us most. As we read, mark, and inwardly digest these the time will come when we can give them expression vocally or by printed word.

The peace can come only slowly. It presents gigantic problems. There will be political, economic, and social problems about which it may not be the place of the Association, as an Association, to speak.

However, underlying it all, is the desire of the peoples that a reign of justice according to law be inaugurated.

That is what lawyers can think, plan, study, and strive for.

It is the hope of the world.

The Association Again Renders Practical Help

TANGIBLE and visible evidence of the type of practical assistance which the American Bar Association is giving to its members and to the public, as well as to agencies of Government, in this time of war, is afforded by the Civilian Defense Manual on "Legal Aspects of Civilian Protection."

Bearing proudly on its cover, side by side, the emblems of the OCD and the American Bar Association, and stating on its title page that it was "prepared by the American Bar Association for the United States Office of Civilian Defense," the Manual has been printed by the Government Printing Office (OCD Publication No. 2701) and is being distributed widely to those engaged in the numerous tasks of civilian protection, in state and local defense councils, and the like, throughout the United States.

When the Selective Service Act was enacted, the American Bar Association prepared, and the Government published and distributed, the Manual for the guidance of draft boards and appeal boards. The expert and useful service of the Association was thereby brought to many thousands of citizens in their home communities, in all parts of the country, perhaps as never before. Now the same thing has been done in the vital field of civilian defense. The official texts and informative material which will be chart and compass for thousands of members of local defense councils will come to them with the name and authority of the American Bar Association.

This will, of course, help to foster good will and favorable public relations, for lawyers and their Bar Associations. But the assistance thereby given to the OCD and to civilian workers in local defense is by no means the only service thereby rendered by the Association. This 240-page Manual contains much material which will be of practical help to lawyers. The OCD has placed 10,000 copies of the Manual at the disposal of the Association, for distribution to such of its members as want it. The directions for obtaining a copy of the Manual are published elsewhere in this issue. The Association is pleased to be able to do this for its members.

John H. Wigmore

March 4, 1863—April 20, 1943

AFTER the makeup of the JOURNAL was completed and just before it went to press, the tragic news reached us of the death of former Dean Wigmore. He had been at luncheon at the rooms of the Chicago Bar Association and left in a taxi to keep an important engagement. Five minutes later his taxi collided with an automobile. He suffered a fracture of the skull and never regained consciousness.

Any adequate presentation of the life and activities of this leader in the law must be postponed until our next issue.

His last work for the JOURNAL came to us only a few days ago. Appreciating that revision of our alienage and citizenship laws will be a necessary element in the terms of peace, he pointed out the particular questions which were likely and indeed certain to require study and treatment. That article will be published in our next issue.

This is the last of many instances in which this wise forward-looking man gave to his profession information which would be helpful and inspiring.

REVIEW OF RECENT SUPREME COURT DECISIONS

By EDGAR BRONSON TOLMAN*

Railroad Reorganization—Proceedings Under Section 77 of Bankruptcy Act—Function of Interstate Commerce Commission and District Courts

In two proceedings involving the reorganization of the Western Pacific Railroad Company and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectively, the Supreme Court for the first time passes on the merits of plans of reorganization formulated and approved by the Interstate Commerce Commission under Section 77 of the Bankruptcy Act. The Court sustains generally, with few exceptions, both the substance and form of the Commission's reports and plans.

Institutional Bondholders Committee v. Western Pacific Railroad Corporation et al. 87 L. ed. Adv. Ops. 650; 63 Sup. Ct. Rep. 692; U. S. Law Week 4261. (Nos. 7, 8, 20, 33 and 61, decided March 15, 1943.)

Group of Institutional Investors v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company et al., 87 L. ed. Adv. Ops. 687; 63 Sup. Ct. Rep. 727; U. S. Law Week 4249. (Nos. 11-19, 32, decided March 15, 1943.)

I. Western Pacific

This opinion deals with a number of legal questions involved in railroad reorganization proceedings under Section 77 of the Bankruptcy Act. Under the statute, a railroad in reorganization is required to file a plan of reorganization in the proper district court. The plan is then referred to the Interstate Commerce Commission for hearing and the Commission may ultimately approve a plan different from that filed. Upon approval of a plan by the Commission, it certifies the same to the court for consideration, and the court is required to approve or disapprove the plan, depending on whether the plan meets or does not meet the applicable statutory requirements.

If the court approves the plan, it certifies its opinion and order of approval to the Commission. The latter then submits the plan to a vote of security holders and stockholders found to have an interest in the property, and consequently entitled to vote on the plan. If any class of security holders rejects the plan, it may nevertheless be confirmed over an adverse vote if the court finds that the plan provides for fair and equitable treatment of the parties rejecting the plan and that the rejection is not reasonably justified in the light of the rights and interests of those rejecting the plan and all relevant facts.

The instant case involves questions as to the respective functions of the Commission and the district court, the method of valuation of railroad property by the Commission, the legality of the exclusion of stockholders and certain creditors from participation, a more favorable participation by the Reconstruction Finance Corporation because of new money furnished for the plan, the allocation of securities among claimants, and the priorities of liens under different mortgages. The questions involved have not previously been passed upon by the Supreme Court.

The railroad's petition in bankruptcy was approved in August, 1935. Later, trustees were appointed and ratified. After extended hearings, the Commission certified a plan to the district court in September, 1939. The Commission's plan drastically reduced the capitalization of the road and provided for greatly reduced fixed charges. It found, relying largely upon past earnings, that the fixed charges of the reorganized company should not initially and substantially exceed $500,000, in addition to a capital fund of $500,000 for additions and betterments, and about $94,000 on equipment trusts to be assumed by the reorganized company. The fixed charges included $400,000 annually for fixed interest on $10,000,000 principal amount of first mortgage bonds. These charges aggregated some $994,000 annually. The Commission also found that the system could reasonably carry an additional $1,000,000 of contingent interest charges, resulting in over-all charges for fixed and contingent bond interest, equipments, capital and sinking funds of approximately $2,000,000 a year. The plan also made provision for the issuance of preferred and common stock.

The new securities were allotted by the Commission upon a consideration of "the relative priority, value, and equity of the various claims and the value of the new securities available in exchange therefor."

The Commission further found that the equity of the existing stock had no value and that there was no equity in the claims of unsecured creditors since the claims of all secured creditors could not be satisfied within the approved new capitalization.

The district court conducted a full hearing on the plan, received additional evidence and found that the plan conformed to the requirements of the statute. It overruled all objections to the plan.

The Circuit Court of Appeals for the Ninth Circuit reversed the order, resting its reversal upon a supposed necessity under *Consolidated Rock Products Co. v. DuBois*, 312 U. S. 510, for making specific valuations of the entire property, of the respective portions covered by the first mortgage and by the refunding mortgages of each of the old claims, and of the new securities awarded to creditors.

On certiorari, the Supreme Court, in an opinion by Mr. Justice REED, reversed the ruling of the Circuit Court of Appeals and affirmed the order of the district court, thus upholding the Commission's plan in all respects. The Supreme Court concludes that the func-

*Assisted by JAMES L. HOMIRE.

tions of determining value and of fixing the capitalization are vested in the Commission. Referring to the statutory provision on valuation and sustaining the Commission's power to determine it, the opinion states:

> The power of the court does not extend to participation in all responsibilities of the Commission. Valuation is a function limited to the Commission, without the necessity of approval by the court. The first sentence of the last paragraph of subsection (e) provides:
>
> "If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan."
>
> The function of valuation thus left to the Commission is the determination of the worth of the property valued, whether stated in dollars, in securities or otherwise. One of the primary objects of the bill was the elimination of obstructive litigation on the issue of valuation and the form finally chosen approached as near to that position as seemed to the draftsmen legally possible. Judicial reexamination was not considered desirable. None of the findings required of the judge under subsection (e) relate specifically to valuation. Congress apparently intended to leave the determination of valuation "of any property for any purpose under this section" to the Commission. The language chosen leaves to the Commission, we think, the determination of value without the necessity of a reexamination by the court, when that determination is reached with material evidence to support the conclusion and in accordance with legal standards. It leaves open the question of whether in reaching the result the Commission had applied improper statutory standards.

The Court also sustains the Commission's jurisdiction, as exercised here, to determine capitalization. Limiting the district court's function in this connection to one merely of veto of the entire plan, Mr. Justice REED says, in part:

> The problems of capitalization are of public interest. The corporate form is universally used for the business of railroading. Railroad securities are widely distributed in investment portfolios and among individual savers. The reasonable earning power of securities, the terms and conditions of the respective issues and the soundness of the aggregate capitalization affects the public interest immediately and directly. Capitalization is an essential factor bearing on an efficient transportation system for shipper, investor and consumer. The development of the capitalization of the reorganized company which is entrusted solely to the Commission under the requirement that the plan be compatible with the public interest is that relating to the total amount of issuable securities and the quality of the securities to be issued. So long as legal standards are followed, the judgment of the Commission on such capitalization is final.
>
> Thus limited the district court acts concerning the plans only upon the issues specifically delegated by subsection (e). As to these, its powers are negative. It may veto the plan in its entirety but may improve it only by suggestion.

The opinion then discusses the Commission's method of valuation. Without making specific findings of value, the Commission determined the new permissible capital structure, after considering investment in the property, rate-making value, the earnings record, traffic prospects and other pertinent data. Taking the lowest value for no par common stock, suggested by the Commission, $57 per share, the total value of securities is something over $84,000,000, which the Commission concluded represented the proper reorganization value. Opponents of the plan, relying upon *Consolidated Rock Products Co. v. DuBois*, 312 U. S. 510, contended that approval of a capital structure could not be substituted for detailed determinations of value. Rejecting this contention, the opinion states:

> . . . There is nothing, however, in the *Du Bois* case to indicate that dollar valuations of the property or claims are essential for recapitalization or the distributions of securities in reorganizations. The defect in *Du Bois* was not the failure to find dollar values but the failure to find the worth of the security behind independent mortgages on distinct properties and of assets subject to the claims of particular groups of creditors. Such findings were required in that case because the court was dealing with a parent and two subsidiaries with inter-company accounts. Each subsidiary entity had its own creditors. The system was a unified operation and we held the claims against the subsidiaries had priority over stockholders' equity in the parent, p. 523. Without a separate valuation of assets, it was impossible to tell what assets of the parent were left to form the basis for the securities distributed to the parent's stockholders. In *Du Bois*, as here, the manner of reaching that valuation, so long as it complies with the statutory standards, is not important. There are subsidiaries here but there are no claimants of the subsidiaries looking to the parent. The aggregate of the authorized securities in the present case is to be equitably distributed among claimants against a single corporation. Findings were made as to the property covered by the different mortgages of the debtor and securities allocated on the basis of that finding. . . . Under such circumstances the lack of a valuation in dollars is immaterial. The important element is the allocation of the securities so as to preserve to creditors the advantages of their respective priorities. That is to say, senior claims first receive securities of a worth sufficient to cover their face and interest before junior claims receive anything. Consequently, we are of the opinion that the determination by the Commission of the aggregate amount of securities which may be issued against the system is in substance a finding of total value for reorganization purposes.

The Court also approves the Commission's allocation of securities among the respective creditors. In particular, question was raised as to the treatment accorded the RFC, which holds $10,000,000 of trustees' certificates and collateral notes for $2,963,000 secured by refunding bonds. Two other creditors also held notes secured by refunding bonds. The RFC was accorded relatively better treatment on its collateral notes than that awarded the other two collateral noteholders, but the better treatment of the RFC was related to its willingness to purchase $10,000,000 of new first mortgage bonds for the purpose of retiring the trustees' certificates. It was admitted that the trustees' certificates were worth par, but the evidence showed that the new bonds would have a value between 80 and 90. The Commission in these circumstances took the view that the RFC, in respect of its collateral notes, should receive the same treatment as the holders of first mortgage bonds, being treatment substantially better than that accorded the holders of refunding bonds. This conclusion the Su-

preme Court supports.

The opinion also considers questions as to the priority of lien of the refunding mortgage and the first mortgage in respect of three classes of property, and sustains the priority of the first mortgage in respect of all the classes, and consequently affirms the conclusions of the Commission with respect thereto.

An important feature of the case dealt with in the opinion is the attack made on the plan because of changed conditions since its certification by the Commission, in the light of materially improved earnings derived in a large measure from war traffic. The Court reaches the conclusion that on the showing as to changed conditions in the district court, there was no basis for disapproving the plan as unfair to junior equities.

The power of the Commission to select the effective date of the reorganization is also upheld by the Court.

Mr. Justice ROBERTS concurred in the judgment of the Court, but delivered a separate opinion. In his opinion he emphasizes that in determining whether a plan is fair and equitable in the allotment of new securities in the reorganized company the district judge must satisfy himself, as he was required to do in the old equity proceedings, that the relation between the various classes of security holders is substantially maintained in the reorganization. While the court in performing this duty should accord great weight to the Commission's action, it should not accord finality to that action, but must find that the Commission had a substantial foundation in fact for its allocation.

Mr. Justice FRANKFURTER joined in the opinion of Mr. Justice ROBERTS and also agreed with the principal opinion except as to the views expressed concerning the respective functions of the Commission and the district court.

The cases were argued by Mr. Russell L. Snodgrass for the RFC; by Mr. M. C. Sloss for Western Pacific Railroad; by Mr. Robert E. Coulson for A. C. James Company; by Mr. E. G. Buckland for the Railroad Credit Corp.; by Mr. Robert T. Swain for the Institutional Bondholders Committee; by Mr. Harold C. McCollom for Irving Trust Company, and by Mr. Orville W. Wood for Crocker First National Bank of San Francisco et al.

II. Milwaukee Road

The Chicago, Milwaukee, St. Paul & Pacific Railroad reorganization proceedings, also pending under Section 77, were reviewed concurrently with the Western Pacific. In this case, Mr. Justice DOUGLAS delivered the opinion.

There were involved here certain questions similar to those presented in the companion case, Western Pacific reorganization. Among these were the propriety of excluding old stockholders from the new company by the method adopted by the Commission, the legality of creating a capital fund for additions and betterments, the relation of war-time earnings to the new capitalization and the necessity for detailed findings of dollar values as had been required by the Circuit Court of Appeals in the *Western Pacific* case.

In the *Milwaukee* case, the circuit court specifically sustained the Commission's action in excluding the old preferred and common stock as having no value. However, it took the view that the *DuBois* case required further detailed findings to support the allocations of new securities as made by the Commission to creditors of the old company entitled to participate in the new company.

The Supreme Court sustains the ruling as to the stock and, with certain exceptions referred to later, upholds the Commission's method of allocating new securities without further formal findings.

The Court also supports the Commission in its requirement of a capital fund for additions and betterments.

As to change of circumstances, particularly the increase in earnings, as a ground for disapproving the plan, the Supreme Court affirms the view of the lower courts that no showing was made sufficient to require that action. With reference to this, Mr. Justice DOUGLAS says:

> We agree with the Circuit Court of Appeals that no sufficient showing of changed circumstances has been made which requires the district court to return the plan to the Commission for reconsideration. Late in 1939 the Commission had occasion to say, "We know from past experience that the upswing in business which war brings is temporary and likely to be followed by an aftermath in which conditions may be worse than before." 53d Annual Report, p. 5. The record during the last World War is illuminating. It shows that the Milwaukee's net operating income rose to almost $31,000,000 in 1916, exceeded $21,500,000 in 1917, dropped to about $4,000,000 in 1918 and to about $2,000,000 in 1919 and showed a deficit of over $14,000,000 in 1920. See *Chicago, Milwaukee & St. Paul Reorganization*, 131 I. C. C. 673, 715. As we have noted the Commission conceived as its responsibility the devising of a plan which would serve "as a basis for the company's financial structure for the indefinite future." We cannot assume that the figures of war earnings could serve as a reliable criterion for that "indefinite future." As some of the bondholders point out, the bulge of war earnings *per se* is unreliable for use as a norm unless history is to be ignored; and numerous other considerations, present here as in former periods, make them suspect as a standard for any reasonably likely future normal year. Among these are the great increase in taxes and in certain costs of operation and the decrease in water and truck competition. In addition to the increase in tax rates, of which we cannot be unmindful, there is the likely increase of the total tax burden occasioned by the conversion of debt into stock. It is estimated by certain bondholders that by reason of this fact a full dividend could not be paid on the new preferred stock and no dividend could be paid on the new common stock even on the basis of earnings as great as those for 1941. In view of these considerations we cannot say that the junior interests have carried the burden which they properly have of showing that subsequent events make necessary a rejection of the Commission's plan.

Dealing with the question of allocations, the Supreme Court sustains the Commission in part as to its method of dealing with the General Mortgage bonds. It agrees with the Commission that no fixed formula for allocation of securities is prescribed by the statute, and it sustains the view that divisional mortgages under the old capitalization may be converted into system mortgages in the new capitalization, provided there is equitable equivalence between the new securities and the old ones.

However, the Court finds merit in two objections made by the General Mortgage bonds to the treatment accorded them. The first of these relates to a dispute as to so-called "pieces of lines east." The General Mortgage bonds claimed a first lien on the pieces of lines east but the Commission credited the earnings of those pieces to the 50-Year 5's of 75. These earnings amounted to $170,100 in 1936, and hence the Court concludes that the matter was not trivial or frivolous. The Commission itself expressed doubt about the propriety of what it had done in the absence of a judicial determination as to which mortgage constituted a first lien on the pieces of lines east. The Court concludes that a judicial determination ought to be made in order to produce a fair and equitable plan.

The second objection of the General Mortgage bonds, found to have merit, relates to the treatment of the General Mortage bonds in relation to the Adjustment bonds which are junior to the Generals. The plan satisfied the claim of the General Mortgage bonds in part with preferred stock to fill out the face amount of the old bonds. At the same time the Commission allotted to the Adjustment Mortgage bonds 1,740,492 shares of common stock.

The Court finds that this allotment to the Adjustment Mortgage bonds, being junior, is not justifiable unless and until adequate findings be made that the General Mortgage bonds have been fully compensated for the rights which they are called upon to surrender. No such findings have been made and the Court takes the position that the plan must be reconsidered to remedy that defect.

The two latter points apply also to the 50-Year 5's of 75, and further findings will have to be made as to that issue.

The Milwaukee reorganization involves a somewhat unusual problem in connection with the securities of the Terre Haute, a leased line which is not in process of reorganization. The Commission took the view that the consolidation of the Terre Haute with the Milwaukee was desirable, but felt that it was impossible to provide therefor in the plan, since the Terre Haute is not a debtor in the proceedings. The Commission concluded, therefore, that the plan should provide that an offer for a new lease should be made to the Terre Haute security holders, to be effective only if the offer should be accepted "by substantially all of the Terre Haute bondholders." In the event that that acceptance should not be forthcoming, the lease was to be rejected under the plan, and the rejection was to be as of the date that the district court found that the Terre Haute bondholders had not consented to the making of a new lease.

The provisions regarding the Terre Haute were attacked chiefly on the grounds: (1) that the proposal to the Terre Haute security holders did not even attempt to preserve the priorities of the several issues *inter sese;* (2) that the lease was profitable to the Milwaukee rather than burdensome, and hence not subject to rejection; and finally (3) that if rejected, the rejection should date back to the date of the institution of the reorganization proceedings, with a consequent accounting to the Terre Haute for alleged profits in the interim.

All of these contentions are rejected by the Supreme Court and the Commission's solution of the Terra Haute problem is affirmed.

Mr. Justice ROBERTS delivered a brief separate opinion stating that the statute fails to provide for a situation such as that of the Terre Haute here, but provides merely for affirmance or rejection of leases. Hence, he concludes that the plan fails to conform to the statutory standards, and gives the Terre Haute bondholders "an inordinately superior position to that accorded the General Mortgage bonds, and produces a serious discrimination against the latter." This opinion also expresses disapproval of the treatment of the General Mortgage bondholders upon the ground that there was no substantial foundation for the Commission's allocation to them.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE did not participate in these decisions.

The cases were argued by Mr. Kenneth F. Burgess for Group of Institutional Investors; by Mr. A. N. Whitlock for Henry A. Scandrett et al., trustees of the railroad; by Mr. Fred N. Oliver for Mutual Savings Bank Group; by Mr. Russell L. Snodgrass for RFC; by Mr. John L. Hall for the Railroad; by Mr. Albert K. Orschel for Protective Committee of Holders of Preferred Stock of Railroad; by Mr. McCready Sykes for United States Trust Co.; by Mr. Frederick J. Moses for "University Group" of General Mortgage bondholders; by Mr. Edwin S. S. Sunderland for the Fifty-Year Mortgage Trustees; by Mr. C. Frank Reavis for the Protective Committee of Fifty-Year Mortgage Bonds; by Mr. Meyer Abrams for Adjustment Mortgage bondholders; by Mr. Thomas S. McPheeters for Gary First Mortgage Group; by Mr. Reese D. Alsop for Chicago, Terre Haute and Southeastern Ry. Co., First Lien Bondholders Committee; and by Mr. Ernest S. Ballard for Massachusetts Mutual Life Insurance Co. et al.

Railroads—Suburban Passenger Fares—Increase in Rates—State and Federal Jurisdiction

The Interstate Commerce Commission having explained that it did not intend to increase certain Illinois commutation fares, the Supreme Court reversed an injunction of a three-judge court.

Illinois Commerce Commission et al. v. Charles M. Thomson, Trustee, 87 L. ed. Adv. Ops. 783; 63 Sup. Ct. Rep. —; U. S. Law Week 4305. (No. 178, decided April 12, 1943).

A three-judge district court enjoined the Illinois Commerce Commission from interfering with a 10% increase in intrastate commutation passenger fares by the Chicago & North Western Railway. An Illinois statute, long in effect, fixes a maximum of two cents a mile, and the proposed increase would bring the fares above this rate in some instances. From the judgment of the three-judge court a direct appeal was taken to the Supreme Court of the United States. The Supreme Court reversed the judgment.

In 1925 the Interstate Commerce Commission had ordered the Chicago & North Western to increase its *intrastate* commutation fares by 20%, to correspond with recently increased *interstate* fares, thus avoiding discrimination against interstate passenger traffic and other inequalities. The Commission's order was expressly made "subject to a maximum of 2 cents per mile," "in deference to the state statute." The opinion of the Supreme Court, delivered by Mr. Chief Justice STONE, summarizes the background and effect of the order of 1925:

> In 1920 the Interstate Commerce Commission authorized a general increase of 20% in interstate passenger fares, establishing a countrywide standard passenger fare of 3.6 cents a mile. . . . The Commission later instituted the § 13 proceeding which resulted in its 1925 order increasing by 20%, subject to a 2 cent per mile maximum, the Illinois intrastate commutation fares of the Chicago & North Western, in order to remove the prejudice of such fares to interstate commerce. . . . This was followed by the 1936 order directing a general reduction of interstate passenger fares. . . . And to prevent intrastate fares subject to the earlier § 13 orders from being higher than the new interstate maximum fares, the Commission ordered all outstanding § 13 orders to be modified to the extent necessary to permit the new fares to become effective. . . . While this order affected many intrastate fares . . . it was without effect on Illinois commutation fares on the Chicago & North Western, which had been no greater than the maximum of two cents a mile. Thus the Illinois commutation fares involved in the present case, established in 1925, were not reduced between 1925 and 1942.

As for the order now under review, the Chief Justice says:

> . . . By order of January 21, 1942 . . . the [Interstate Commerce] Commission—upon findings that the increase was necessary for adequate and efficient service during the war emergency—authorized the railroads, including the Chicago & North Western, to increase passenger fares by 10%. The order further directed that "all outstanding orders, as amended, of the Commission, authorizing or prescribing interstate and intrastate fares, or bases of fares be, and they are hereby, modified, effective concurrently with the establishment of the increased fares" approved by the order, but only to the extent necessary to permit the authorized increase to be added to "the interstate and intrastate fares approved or prescribed in, or maintained or held by virtue of, said outstanding orders"; that a copy of the order be filed "in the docket of each such proceeding, including those proceedings under § 13 of the Interstate Commerce Act enumerated in the order of February 28, 1936, in Docket No. 26550" . . . In a report and order of March 2, 1942 . . . the Commission reaffirmed these findings. . . .

Under these orders the railway filed tariff schedules increasing intrastate passenger commutation fares by 10%. The Illinois Commerce Commission suspended these tariffs and directed that a hearing be held on the propriety of the increases. These, in general, were the proceedings which the three-judge court enjoined, as in violation of the Interstate Commerce Commission's 1942 order, and for the additional reason that the old fares, continued in effect by the State Commission, were held to be confiscatory.

The Supreme Court's opinion begins by stating that the case turns on the meaning of the 1942 order of the Interstate Commerce Commission and its application to the railway's interstate commutation fares. On this the Chief Justice later says:

> The meaning and appropriate application of the Interstate Commerce Commission's order are undoubtedly obscure. . . .
>
> As we were in doubt as to the intended scope of the Commission's order, and the Commission had not filed a brief or otherwise intervened in this litigation, we requested a brief on its behalf discussing the meaning and application of its order. In compliance with our request it has filed a brief in which it takes the position that the 1942 order was not intended, and should not be construed, to direct a 10% increase in the Illinois intrastate commutation fares established in 1925. Although the brief is not wholly free from the obscurity surrounding the order itself, the Commission's ultimate position that the order is inapplicable to these particular commutation fares is one which, under all the circumstances of the case, we accept.

The conclusion of the Court, as stated by the Chief Justice, is this:

> The Interstate Commerce Commission is without jurisdiction over intrastate rates except to protect and make effective some regulation of interstate commerce. In view of the Commission's construction of its order, and the grounds upon which it rests, we can only conclude that there is at least serious doubt whether the 1942 proceeding and the order which resulted from it were ever intended by the Commission to increase the intrastate rates in question.

The Chief Justice adds a few words on the finding of the three-judge court that the proposed new rates would be confiscatory:

> . . . The only support for the finding of confiscation is in the general allegations of the complaint that the existing intrastate commutation fares complained of are confiscatory, and more particularly that these fares are not adequate to compensate for the cost of the particular service.
>
> Apart from the insufficiency of such allegations, when not buttressed by convincing proof, to sustain an injunction setting aside rates as confiscatory, . . . it appears that when the present suit was brought the state commission had

ordered a hearing before it concerning the propriety of appellee's proposed increase of the existing, allegedly confiscatory, fares. There is no contention and no finding that appellee's attack on the existing fares as confiscatory was not open for consideration before the commission. . . .

Upon this record the district court should have declined to pass on the merits of the confiscation issue.

Mr. Justice RUTLEDGE took no part.

Mr. Justice ROBERTS dissented.

I am of opinion that the judgment should be affirmed. This case is important not so much because of the relative rights of the parties as of the principles announced by the Court which I think are likely to produce unfortunate results in later cases.

First. The meaning and scope of the Interstate Commerce Commission's order is, in my view, clear. It expressly included the earlier § 13 order affecting the intrastate rates of the Chicago and North Western which are in question. . . .

Second. Even if the order were obscure, any party in interest could have obtained a clarification by application to the Commission. . . .

Third. It seems to me inadmissible to permit the Commission, in a litigation such as the present, to suggest that its order was not intended to cover the intrastate rates in question because, forsooth, the order is not supported by requisite findings. . . .

Fourth. I also think it inadmissible to litigate, in a collateral proceeding such as this, the question of the adequacy of the support of the Commission's order in the record made before the Commission. . . .

The case was argued by Mr. William C. Wines for the Commission and by Mr. Nye P. Morehouse for the Trustee of the Railway.

Supreme Court—Original and Appellate Jurisdiction—Writs of Mandamus and Prohibition in Aid of Appellate Powers—Immunity of Foreign State as Sovereign

The United States Supreme Court has jurisdiction to issue a writ of mandamus directing a district court to allow a claim of immunity by a foreign sovereign state, although application for the writ might have been made to the Circuit Court of Appeals.

Ex parte Republic of Peru, owner of the Peruvian Steamship "Ucayali," 87 L. ed. Adv. Ops. 753; 63 Sup. Ct. Rep. 793; U. S. Law Week 4295. (No.—, Original, decided April 5, 1943).

The freighter *Ucayali,* owned by the Republic of Peru, was chartered by a Cuban corporation to carry a cargo of sugar to New York. Instead, it appears to have proceeded to New Orleans without this cargo, and the charterer filed a libel against the vessel in the United States District Court for the Eastern District of Louisiana, claiming damages for the alleged failure to carry out the terms of the charter party. The Peruvian government intervened in the district court, claiming the vessel, but making this reservation: "The filing of this claim is not a general appearance and is without prejudice to or waiver of all defenses and objections which may be available to respondent and claimant, particularly, but not exclusively, sovereign immunity."

The ship was released upon a bond for $60,000 given by Peru, and at the instance of Peru the testimony of the master of the vessel on the merits was taken. Extensions of time for answering or otherwise pleading to the libel were asked by Peru and allowed by the district court. In all these proceedings the same reservation of right was expressly made.

In the meantime Peru sought and obtained from the State Department a formal recognition of the claim of immunity. This was communicated to the district court by the United States District Attorney, and Peru asked the district court to dismiss the libel. The court refused, on the ground that Peru had waived its immunity by taking steps in the action which the court thought constituted a general appearance, despite Peru's attempted reservation of its right. The Peruvian government then applied to the Supreme Court of the United States for leave to file a petition for a writ of prohibition or of mandamus, directed to the district court, to declare the vessel immune from suit.

These two questions came up for decision: first, had the Supreme Court jurisdiction to grant the petition? second, had Peru waived its immunity?

The opinion of the Court was delivered by Mr. Chief Justice STONE. The Chief Justice first took up the question of jurisdiction, saying:

> The jurisdiction of this Court as defined in Article III, § 2, of the Constitution is either "original" or "appellate." Suits brought in the district courts of the United States, not of such character as to be within the original jurisdiction of this Court under the Constitution, are cognizable by it only in the exercise of its appellate jurisdiction. Hence its statutory authority to issue writs of prohibition or mandamus to district courts can be constitutionally exercised only insofar as such writs are in aid of its appellate jurisdiction. . . .
>
> Under the statutory provisions, the jurisdiction of this Court to issue common law writs in aid of its appellate jurisdiction has been consistently sustained. The historic use of writs of prohibition and mandamus directed by an appellate to an inferior court has been to exert the revisory appellate power over the inferior court. The writs thus afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to exercise its authority when it is its duty to do so.
>
> The common law writs, like equitable remedies, may be granted or withheld in the sound discretion of the Court, . . . and are usually denied where other adequate remedy is available. . . .
>
> After a full review of the traditional use of the common law writs by this Court, and in issuing a writ of mandamus, in aid of its appellate jurisdiction, to compel a district judge to issue a bench warrant in conformity to statutory requirements, this Court declared in *Ex parte United States,* 287 U. S. 241, 248-49: "The rule deducible from the later decisions, and which we now affirm, is, that that this Court has full power in its discretion to issue the writ of mandamus to a federal district court, although the case be one in respect of which direct appellate jurisdiction is vested in the circuit court of appeals—this Court having ultimate discretionary jurisdiction by certiorari—but that such power will be exercised only where a question of public importance is involved, or where the question is

of such a nature that it is peculiarly appropriate that such action by this Court should be taken. In other words, application for the writ ordinarily must be made to the intermediate appellate court, and made to this Court as the court of ultimate review only in such exceptional cases."

We conclude that we have jurisdiction to issue the writ as prayed.

The Chief Justice then considered whether this is such an "exceptional case."

We think that—unless the sovereign immunity has been waived—the case is one of such public importance and exceptional character as to call for the exercise of our discretion to issue the writ rather than to relegate the Republic of Peru to the circuit court of appeals, from which it might be necessary to bring the case to this Court again by certiorari. The case involves the dignity and rights of a friendly sovereign state, claims against which are normally presented and settled in the course of the conduct of foreign affairs by the President and by the Department of State. When the Secretary elects, as he may and as he appears to have done in this case, to settle claims against the vessel by diplomatic negotiations between the two countries rather than by continued litigation in the courts, it is of public importance that the action of the political arm of the Government taken within its appropriate sphere be promptly recognized, and that the delay and inconvenience of a prolonged litigation be avoided by prompt termination of the proceedings in the district court. If the Republic of Peru has not waived its immunity, we think that there are persuasive grounds for exercising our jurisdiction to issue the writ in this case and at this time without requiring petitioner to apply to the circuit court of appeals, and that those grounds are at least as strong and urgent as those found sufficient in *Ex parte United States,* in *Maryland* v. *Soper,* in *Colorado* v. *Symes,* and in *McCullough* v. *Cosgrave.*

The opinion then proceeds to the question whether Peru had waived its immunity, the district court plainly having acquired jurisdiction *in rem,* and the libelant's claim against the vessel constituting a case or controversy which the Court had authority to decide. Therefore, says the opinion:

the question which we must decide is not whether there was jurisdiction in the district court, acquired by the appearance of petitioner, but whether the jurisdiction which the court had already acquired by seizure of the vessel should have been relinquished in conformity to an overriding principle of substantive law.

That principle is that courts may not so exercise their jurisdiction, by the seizure and detention of the property of a friendly sovereign, as to embarrass the executive arm of the Government in conducting foreign relations. "In such cases the judicial department of this government follows the action of the political branch, and will not embarrass the latter by assuming an antagonistic jurisdiction." . . . More specifically, the judicial seizure of the vessel of a friendly foreign state is so serious a challenge to its dignity, and may so affect our friendly relations with it, that courts are required to accept and follow the executive determination that the vessel is immune. When such a seizure occurs the friendly foreign sovereign may present its claim of immunity by appearance in the suit and by way of defense to the libel . . . But it may also present its claim to the Department of State, the political arm of the Government charged with the conduct of our foreign affairs. Upon recognition and allowance of the claim by the State Department and certification of its action presented to the court by the Attorney General, it is the court's duty to surrender the vessel and remit the libelant to the relief obtainable through diplomatic negotiations. . . . This practice is founded upon the policy, recognized both by the Department of State and the courts, that our national interest will be better served in such cases if the wrongs to suitors, involving our relations with a friendly foreign power, are righted through diplomatic negotiations rather than by the compulsions of judicial proceedings.

Finally, the Chief Justice says, on the question of waiver by the Peruvian government—

We cannot say that the Republic of Peru has waived its immunity. It has consistently declared its reliance on the immunity, both before the Department and in the district court. Neither method of asserting the immunity is incompatible with the other. Nor, in view of the purpose to be achieved by permitting the immunity to be asserted, are we able to perceive any ground for saying that the district court should disregard the claim of immunity, which a friendly sovereign is authorized to advance by way of defense in the pending suit, merely because the sovereign has seen fit to preserve its right to interpose other defenses. The evil consequences which might follow the seizure of the vessel are not any the less because the friendly state asserts other grounds for the vessel's release.

Here the State Department has not left the Republic of Peru to intervene in the litigation through its Ambassador as in the case of *The Navemar.* The Department has allowed the claim of immunity and caused its action to be certified to the district court through the appropriate channels. The certification and the request that the vessel be declared immune must be accepted by the courts as a conclusive determination by the political arm of the Government that the continued retention of the vessel interferes with the proper conduct of our foreign relations. Upon the submission of this certification to the district court, it became the court's duty, in conformity to established principles, to release the vessel and to proceed no further in the cause.

Mr. Justice ROBERTS expressed concurrence in the result.

A long and elaborate dissent was filed by Mr. Justice FRANKFURTER. The central point is that in the Justice's opinion the Supreme Court has no power to review the action of the district court in this case, but, even assuming a discretionary power in the Supreme Court—

we should in the circumstances of this case abstain from exercising that power in view of the absence of any showing that relief equally prompt and effective and consonant with the national interest was not, and is not, available in the appropriate circuit court of appeals.

Mr. Justice FRANKFURTER traces the legislation, which extended over a long period of time, to relieve the Supreme Court of classes of litigation and enable the Court to perform its duties with competency and reasonable dispatch. Had the present case arisen under the 1891 Act, there could have been a direct appeal from the district court to the Supreme Court and so the Supreme Court could have issued an appropriate writ to prevent frustration of its appellate powers, or, under very exceptional circumstances, to accelerate the exercise of that power.

There have been occasional, but not many, deviations from the true doctrine in employing these auxiliary writs as incidental to the right granted by Congress to this Court to review litigation, in aid of which it may become necessary

to issue a facilitating writ. The issuance of such a writ is, in effect, an anticipatory review of a case that can in due course come here directly. When the Act of 1891 established the intermediate courts of appeals and gave to them a considerable part of the appellate jurisdiction formerly exercised by the Supreme Court, the philosophy and practice of federal appellate jurisdiction came under careful scrutiny. This Court uniformly and without dissent held that it was without power to issue a writ of mandamus in a case in which it did not otherwise have appellate jurisdiction.

The dissenting opinion continues:

The Judiciary Act of 1925 was aimed to extend the Court's control over its business by curtailing its appellate jurisdiction drastically. Relief was given by Congress to enable this Court to discharge its indispensable functions of interpreting the Constitution and preserving uniformity of decision among the eleven intermediate courts of appeals. Periodically since the Civil War—to speak only of recent times—the prodigal scope of the appellate jurisdiction of this Court brought more cases here than even the most competent tribunal could wisely and promptly adjudicate. Arrears became inevitable until, after a long legislative travail, the establishment in 1891 of intermediate appellate tribunals freed this Court of a large volume of business. By 1916 Congress had to erect a further dam against access to this Court of litigation that already had been through two lower courts and was not of a nature calling for the judgment of the Supreme Court. Act of September 6, 1916, 39 Stat. 726. But the increase of business—the inevitable aftermath of the Great War and of renewed legislative activity—soon caught up with the meager relief afforded by the Act of 1916. The old evils of an overburdened docket reappeared. Absorption of the appellate jurisdiction of the Supreme Court by cases that should have gone to, or been left with, the circuit courts of appeals resulted in unjustifiable subordination of the national interests in the special keeping of this Court. To be sure, the situation was not as bad as that which called the circuit courts of appeals into being. In the eighties three to four years elapsed between the docketing and the hearing of a case. But it was bad enough. In 1922 Chief Justice Taft reported to Congress that it took from fifteen to eighteen months for a case to reach argument.

* * *

The present power of this Court to review directly decisions of district courts must be determined by the restrictions Congress imposed in the Act of 1925. The language of that section is significant:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, *and not otherwise*. . . ." (43 Stat. 936, 938—italics provided.)

This case does not fall even remotely within any of these five Acts. We have thus been given no appellate jurisdiction over this controversy, but by resort to so-called ancillary writs we are exercising appellate jurisdiction here. . . . But when we cannot have jurisdiction in a case on appeal, no proceeding can be ancillary to it.

The Justice then takes up the objection that no mention was made in Congress of the appellate jurisdiction through use of ancillary writs. On this the Justice says:

But it would not be the first time in the history of judiciary legislation that eminent jurisdictional authorities and expert draftsmen, preoccupied with major problems in a large scheme for relieving this Court of undue business, have been forgetful of minor aspects of jurisdiction. . . . For more than half a century the desire of Congress to cut down the appellate jurisdiction of this Court has been given effect in a variety of situations even though Congress did not adequately express such purpose.

Next the Justice discusses the suggestion that practice since 1935 sanctions the assumption of jurisdiction in the present case. After an extended analysis of cases under the 1925 Act, he concludes that—

Authority exercised *sub silentio* does not establish jurisdiction.

In arguing that the Supreme Court should not exercise jurisdiction in cases of this kind, even if jurisdiction were found to exist, the Justice says in the first place:

In deciding whether to give a latitudinarian or a restricted scope to the appellate jurisdiction of this Court, the important factor is the number of instances in which applications for the exercise of the Court's jurisdiction has been or may be made, not the number of instances in which the jurisdiction has been exercised. And so it tells little that less than ten applications for mandamus have been granted since the Act of 1925. What is far more important is that merely for the first seven Terms after that Act not less than seventy-two applications for such writs were made. Every application consumes time in consideration, whether eventually granted or denied.

Finally, says the Justice,

Had the Court jurisdiction, this case would furnish no occasion for its exercise. On whatever technical basis of jurisdiction the availability of these writs may have been founded, their use has been reserved for very special circumstances. However varying the language of justification, these ancillary writs have been issued only to further some imperative claim of justice. . . .

No palpable exigency either of national or international import is made manifest for seeking this extraordinary relief here. For all practical purposes the litigation has ceased to concern a vessel belonging to a sister republic. While, to be sure, the legal issues turn on the claim of sovereign immunity by Peru in a vessel libeled in an American harbor, the ship has long since been released and the actual stake of the controversy is a bond. Thus the case for our intervention, to the disregard of the circuit court of appeals, cannot be put higher than the propriety of vindicating the dignity of a friendly foreign state. . . . To require a foreign state to seek relief in an orderly fashion through the circuit court of appeals can imply an indifference to the dignity of a sister nation only on the assumption that circuit courts of appeals are not courts of great authority. Our federal judicial system presupposes the contrary. Certainly this Court should in every possible way attribute to these courts a prestige which invites reliance for the burdens of appellate review except in those cases, relatively few, in which this Court is called upon to adjudicate constitutional issues or other questions of national importance.

The Justice ends with an argument for keeping the Court's docket clear for the cases with which it alone can deal.

To remit a controversy like this to the circuit court of appeals where it properly belongs is not to be indifferent to claims of importance but to be uncompromising in safeguarding the conditions which alone will enable this Court to discharge well the duties entrusted exclusively to us. The tremendous and delicate problems which call for the judgment of the nation's ultimate tribunal require the utmost conservation of time and energy even for the

ablest judges. Listening to arguments and studying records and briefs constitute only a fraction of what goes into the judicial process. For one thing, as the present law reports compared with those of even a generation ago bear ample testimony, the types of cases that now come before the Court to a considerable extent require study of materials outside the technical law books. But more important, the judgments of this Court are collective judgments. Such judgments presuppose ample time and freshness of mind for private study and reflection in preparation for discussions in Conference. Without adequate study there cannot be adequate reflection; without adequate reflection there cannot be adequate discussion; without adequate discussion there cannot be that mature and fruitful interchange of minds which is indispensable to wise decisions and luminous opinions.

It is therefore imperative that the docket of the Court be kept down, that no case be taken which does not rise to the significance of inescapability for the responsibility entrusted to this Court. Every case that is allowed to come here which, judged by these standards, may well be left either to the state courts or to the circuit courts of appeals, makes inroads upon thought and energy which properly belong to the limited number of cases which only this Court can adjudicate. Even a judge of such unique gifts and experience as Mr. Justice Holmes felt at the very height of his powers, as we now know, the whip of undue pressure in his work. . . .

In a case like this, we should deny our power to exercise jurisdiction. But, in any event, we should refuse to exercise it. By such refusal we would discourage future applications of a similar kind, and thereby enforce those rigorous standards in this Court's judicial administration which alone will give us the freshness and vigor of thought and spirit that are indispensable for wise decisions in the causes committed to us.

Mr. Justice REED was of the opinion that the Supreme Court had jurisdiction to grant the writ requested, but concurred in this dissent on the ground that application for the writ sought should have been made first to the circuit court of appeals.

The case was argued by Mr. Edgar R. Kraetzer for the petitioner and by Mr. Joseph M. Rault for the respondent.

Criminal Law—Defendant Alleging Conviction in State Court by Known Use of Perjured Testimony—Inherent Power of Original Court to Inquire into Claim—Due Process

A defendant in a state court is not denied due process of law, although habeas corpus is not available, if the trial court can act by writ of error *coram nobis*, but, the situation having changed by reason of a later decision of the highest court of the State, the case is remanded for further consideration.

People of the State of New York ex rel. v. Joseph H. Wilson, 87 L. ed. Adv. Ops. 794; 63 Sup. Ct. Rep. —; U. S. Law Week 4308. (No. 72, decided April 12, 1943).

Whitman was convicted of manslaughter in the first degree upon the verdict of a jury in the Court of General Sessions of the City of New York, and was sentenced to imprisonment for from ten to twenty years, five to ten years of this term being additional punishment under the statute, because he was armed.

After nearly eight years he was released on parole, but later he was returned to prison as a delinquent. He then applied to the Special Term of the Supreme Court for a writ of habeas corpus, alleging that his conviction had been procured through the use of perjured testimony knowingly used by the prosecution, and that thus under the *Mooney* case he had been deprived of his constitutional rights under the due process clause of the Fourteenth Amendment. The writ was dismissed. Upon appeal to the Appellate Division the order of dismissal was affirmed, the court saying: "On this habeas corpus proceeding, he [the defendant] questions the propriety of his original sentence, claiming that he was not guilty of the crime charged and also that it, in effect, amounted to two sentences rather than a single sentence. We find no merit in these contentions and that, in any event, he may not raise the first question by habeas corpus. He should have appealed from the judgment of the Court of General Sessions." Both the Appellate Division and the Court of Appeals denied leave to appeal from this order of affirmance.

Whitman thereupon applied to the Supreme Court of the United States for a writ of certiorari, and the Supreme Court took the case; and, as the petitioner was a poor person without counsel of his own selection, the Court appointed counsel to represent him. After the argument in the United States Supreme Court, the New York Court of Appeals entered a further order dismissing Whitman's attempted appeal to that court as of right from the order dismissing his application for habeas corpus, on the ground that the case is one where appellant is not entitled to a writ of habeas corpus under Section 123 of the New York Civil Practice Act. This section is to the effect that a person "is not entitled to" the writ "where he has been committed or is detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction."

In his original brief and on oral argument for the respondent (prison warden) the Attorney General of the State of New York took the position that the constitutional validity of the defendant's detention could be tested on habeas corpus, and that the state therefore had provided due process of law for the defendant.

After the oral argument, however, another case was decided by the New York Court of Appeals, which, in the opinion of the United States Supreme Court, changed the legal situation. In the new case, *Lyons v. Goldstein*, 290 N. Y. 19, decided March 4, 1943, a prisoner claimed that his plea of guilty had been induced by fraud and misrepresentation on the part of a prosecuting official. The New York court said: "We are not concerned with the merits of the intervener's [defendant's] application. The only question which we consider or upon which we pass is whether the tribunal before which the application was made has power, under any circumstances to hear and determine an application to reopen a judgment of conviction which is based upon

fraud and misrepresentation after the judgment has been entered and sentence has been imposed and the defendant has commenced his term of imprisonment." As to this the Court of Appeals said: "The inherent power of a court to set aside its judgment which was procured by fraud and misrepresentation cannot be doubted. . . . The power was exercised in criminal cases at common law through the writ of error *coram nobis*." The court thereupon followed what it called "the overwhelming weight of authority" by holding that "inherent jurisdiction exists in the court to entertain an application such as the intervener [defendant] here seeks to present."

In the light of *Lyons v. Goldstein* the Attorney General of New York now took a new position in the *Whitman* case, contending that the exclusive remedy available to Whitman was a proceeding *coram nobis* in the Court of General Sessions, where he had been convicted, and that the proceeding actually taken (habeas corpus) was not available. However, the United States Supreme Court, in a *per curiam* opinion (five judges) said:

> If habeas corpus is not an appropriate remedy under the state law, the present proceeding must be dismissed. But we are unable to decide this question with finality, or to resolve the contentions with respect to it, in advance of a controlling decision of the New York courts. In view of the changed situation resulting from the decision in *Lyons v. Goldstein* after we granted certiorari, we think it appropriate to vacate the judgment and to remand the cause to the state court for its determination in the light of that decision, and for such further or other proceedings as may be deemed advisable.

Mr. Justice RUTLEDGE took no part. Mr. Justice FRANKFURTER (Justices ROBERTS and REED agreeing with him) dissented, saying:

> Unless I misapprehend the controlling decisions of the New York Court of Appeals and the authoritative commentary thereon by the chief judge of that court, in a submission before us, New York recognizes the right which petitioner seeks to vindicate here by providing a procedure for asserting it different from that which petitioner has pursued. Petitioner has sought to prove his claim in the New York courts through the writ of habeas corpus. . . . That writ in New York merely tests the legality of a detention according to the face of the record. . . . New York recognizes the constitutional duty to provide a remedy for such a claim as arises under the doctrine of *Mooney v. Holohan*. But New York's remedy for testing such a claim is not by habeas corpus but by appropriate motion before the court in which the sentence of conviction was rendered. . . .
>
> Since the argument in this case, the New York Court of Appeals formally dismissed petitioner's appeal to that court from the order of the Appellate Division denying him habeas corpus, on the ground that "the case is one where appellant is not entitled to a writ of habeas corpus under Section 1231 of the Civil Practice Act". But inasmuch as "the constitutional questions which appellant asked the court to review are substantial," to use the language of Chief Judge Lehman, he could, under New York practice, have gone to the Court of Appeals as of right if habeas corpus were the proper remedy. The merits of petitioner's constitutional claim have therefore never been passed on by, because never presented in an appropriate proceeding to, the highest available New York court. Consequently, it cannot be entertained here. Since petitioner has misconceived the mode by which his constitutional claim may properly be brought before the New York courts, this petition should be dismissed.

The case was argued by Mr. Charles E. Hughes, Jr., for Whitman and by Mr. Bernard L. Alderman for the warden.

Indian Nations—Treaties and Agreements—Duty of Government to Enforce

The United States guaranteed protection for Indian tribes and their lands but did not guarantee collection of sums alleged to be due from railroads for right of way rental and surplus station grounds.

The Creek Nation v. U. S.; The Seminole Nation v. U. S., 87 L. ed. Adv. Ops. 734; 63 Sup. Ct. Rep. 784; U. S. Law Week 4287. (Nos. 321, 322, decided April 5, 1943).

These two Indian tribes brought suit in the Court of Claims against the United States under a statute giving to that court jurisdiction over claims under any treaty or agreement between the United States and the tribes. The cases arose out of the alleged taking and use of portions of tribal lands by private railroad companies, and the tribes contended that the railroads took land not necessary for their purposes and failed to make mileage payments prescribed by law, and that the United States by treaty or agreement had guaranteed collection of such items for the benefit of their wards, the Indian tribes. The government denied any duty to indemnify the tribes under the treaties and agreements relied upon. The Court of Claims dismissed the suits on the ground that no cause of action was stated within the special jurisdictional acts of 1924.

In 1866 the tribes granted a right of way to such railroads as the United States might later authorize across the country which is now the State of Oklahoma. Up to 1902 Congress passed many special acts giving such authority. In 1902 a general statute on the subject was passed.

The claim of the tribes is thus stated by Mr. Justice BLACK in delivering the opinion of the Court:

> The Indians allege that the railroads have not complied with the terms of the treaties and statutes in that they have taken and held certain station reservations unnecessary for railroad purposes for their own benefit, that they have received rents and profits from the use of these lands and that they have failed to pay the annual mileage charge. They ask that the government indemnify them for the value of the lands allegedly wrongfully taken, for rents and profits accruing to the railroads from their use of those lands, and for the mileage charge.
>
> It must be emphasized that this action is brought, not against the railroads which have committed the asserted misdeeds, but against the government for its failure to collect the sums claimed for the petitioners from the rail-

roads. The question for decision here, therefore, is whether assuming *arguendo* that the railroads are at fault, the government was obligated to compel restitution or to recover damages; and if the government failed to do these things, whether it had a duty to make the Indians whole. . . .

The opinion then considers in detail three things relied on by the tribes: the treaty of 1866, the general act of 1902, and a special act of 1906.

(1) Under the treaty, the United States guaranteed to the tribes "quiet possession of their country, and protection against hostilities on the part of other tribes." This was in return for an agreement on the part of the Indians to remain at peace with all other Indian tribes.

We conclude that, whether or not the guarantee is limited to military protection, this language did not obligate the United States to compensate the tribes for encroachments by railroads acting under color of right. Keeping the peace and protecting the Indians was a difficult, and at times almost impossible, task, and we cannot assume that the government meant to guarantee reparations for breach of quiet possession without a single explicit word in the Treaty to that effect. Where reparations were planned, clear language was used. Thus in the section quoted above hostile tribes, and not the government, were explicitly made liable for the tribe's depredations. There is no such provision putting a similar liability for losses of any sort on the United States. A promise by the government to try to keep the peace is not equivalent to a promise to make payments if the peace is not kept; . . .

Finally, on this first point, the opinion says:

The guarantee of quiet possession called for a series of legislative, administrative, and military judgments, but was not a pledge of monetary reparation.

(2) The 1902 act provided for compensation by the railroads to the tribes for land taken, and established a system of valuation, with judicial review. Another provision was that "where a railroad is constructed under the provisions of this Act there shall be paid by the railroad company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile."

We conclude that the words of this section were a direction to the Secretary to make the facilities of his office available for the payment of a form of tax. It provides that the railroads shall pay the tax to the Secretary, but puts no mandatory duty on the Secretary to do the work of collecting. We cannot suppose from any evidence before us either of legislative history or administrative practice that the United States repeatedly assumed obligations to indemnify the Indian tribes for charges which railroad companies, telephone companies, and telegraph companies constructing lines across Indian lands may have failed to pay.

(3) Section 11 of the act of 1906 provided that "all revenues of whatever character accruing to the . . . Creek and Seminole tribes, whether before or after dissolution of the tribal governments, shall . . . be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him."

This language . . . does not make the government a guarantor that sums owing will be paid.

In conclusion Mr. Justice BLACK says:

That the government did not mean to assume an insurer's responsibility for the payment of sums claimed by the Indians against the railroads is further shown by the fact that the Indians retained their own independent remedy for wrongs done them. The tribes have not yet been dissolved, and they have had, both as a general legal right and by virtue of the very section of the 1906 Act under discussion here, the power to bring actions on their own behalf. That the United States also had a right to sue did not necessarily preclude the tribes from bringing their own actions.

We are asked here to impose a liability on the government to these Indians for wrongs allegedly committed against the Indians by others. Appreciating the desire of Congress to recognize the "full obligation of this nation to protect the interests of a dependent people," . . . we are unable to find in the words of the treaties or statutes upon which this action rests any such prodigal assumption by the government of other people's liabilities as that for which the petitioners contend here.

Mr. Justice MURPHY dissented, saying:

As a people our dealings with the Indian tribes have been too often marked by injustice, neglect and even ruthless disregard of their interests and necessities. As a nation we have incurred moral and political responsibilities toward them and their descendants which have been requited in some measure by treaties and statutes framed for the protection and advancement of their interests. Those enactments should always be read in the light of this high and noble purpose, in a manner that will give full scope and effect to the humane and liberal policy that has been adopted by the Congress to rectify past wrongs.

* * *

We have held that the government in its relations with the Indian tribes occupies the position of a fiduciary, that the relationship is similar to that of guardian and ward, and that the duties and responsibilities of the United States toward its wards require a generous interpretation. . . . If the railroads failed to pay to the Secretary the required annual charges for each mile of road constructed, it was the Secretary's duty to act to protect the Indian beneficiaries who should not be expected to assume the burden of acting on their own behalf, especially when the payments were to be made to the Secretary and not to them. . . . The present claim to mileage charges undoubtedly is an equitable one arising out of those statutes and is therefore within the scope and purpose of the jurisdictional acts.

Mr. Justice FRANKFURTER expressed agreement with the views in Mr. Justice MURPHY's dissenting opinion.

The case was argued by Mr. Paul M. Niebell for the Indians and by Mr. Archibald Cox for the United States.

Personal Injury to Seaman—Duty of Shipowner

A shipowner is bound to furnish medical care for an injured seaman—hospitalization on shore if necessary—and the selection of a competent ship's doctor does not discharge the liability. However, no negligence of the doctor is shown in this case although the diagnosis was wrong.

Joseph DeZon v. American President Lines, 87 L. ed. Adv. Ops. 768; 63 Sup. Ct. Rep. 814; U. S. Law Week 4280. (No. 436, decided April 5, 1943).

The point of law in this case is stated thus by Mr. Justice JACKSON in the opening paragraph of his opinion, delivered for the Court:

> Petitioner, a seaman, brought an action at law under the Jones Act against the respondent shipowner. He alleged that while in the service of its ship he suffered injuries which resulted in the loss of his right eye because of the negligence of the ship's doctor in treating him and in failing to have him hospitalized ashore. The trial court directed a verdict against him. The Circuit Court of Appeals affirmed for the reason, among others, that the shipowner's duty to the seaman was only to use due care in selecting a competent physician and, that being done, was not responsible for his incompetence or negligence. . . . This holding raised an important question of federal law under the Jones Act not passed on heretofore by this Court.

The facts of the case were largely undisputed. They are given in brief form in the dissenting opinion of Mr. Justice BLACK, as follows:

> The petitioner's eye began to pain him as a result of an accident on June 3, 1940. By 7 o'clock the next morning, the eye was in such condition that he required medical treatment from the ship's doctor and was released from duty. At 5 o'clock that afternoon the vessel docked at Honolulu. The ship's doctor sent him to the Marine Hospital, which was closed at that hour, and he went to Queens Hospital which, according to the evidence, is an emergency institution connected with the Marine Hospital and which takes care of patients temporarily. The doctor at Queens Hospital advised the petitioner that he should be released from his vessel and enter the hospital at once. This physician advised the seaman that he might lose his eye if he returned to the ship.
>
> The petitioner returned to his vessel at 6 P. M. but was unable to see the ship's doctor until 11:30, approximately 30 minutes before the vessel sailed. He repeated to the ship's doctor the advice given him ashore. The seaman testified that the doctor told him that no danger would result from returning to San Francisco, and, since the doctor was his superior officer and an "accredited physician," he relied upon the doctor's advice although he was suffering intensely.
>
> The petitioner's eye grew worse, treatment in the San Francisco Hospital failed to cure it, and it was removed. . . .

The ship's doctor was a licensed physician, a general practitioner with some surgical experience, selected after careful inquiry. There was testimony that authority to decide whether a seaman should be treated, and the manner of treatment, was vested in the master of the vessel, who had authority to disregard any recommendation of the ship's doctor in this regard.

Mr. Justice JACKSON says:

> The Circuit Court of Appeals in considering this case held that the shipowner's duty ended with the exercise of reasonable care to secure a competent general practitioner and since there could be no question that such care had been exercised, the shipowner could not be held liable in damages for harm that could have followed the negligence of the ship's doctor. In our opinion this was error.

The Jones Act gives to seamen suffering personal injury in the course of their employment the same rights as railway employees have under the Federal Employers' Liability Act. The duty of the shipowner is thus stated by Mr. Justice JACKSON:

> When the seaman becomes committed to the service of the ship the maritime law annexes a duty that no private agreement is competent to abrogate, and the ship is committed to the maintenance and cure of the seaman for illness or injury during the period of the voyage, and in some cases for a period thereafter. This duty does not depend upon fault. It is no merely formal obligation and it admits of no merely perfunctory discharge. Its measure depends upon the circumstances of each case—the seriousness of the injury or illness and the availability of aid. Although there may be no duty to the seaman to carry a physician, the circumstances may be such as to require reasonable measures to get him to one, as by turning back, putting in to the nearest port although not one of call, hailing a passing ship, or taking other measures of considerable cost in time and money.

As for the position of the doctor—

> The doctor in treating the seaman was engaged in the shipowner's business; it was the ship's duty that he was discharging in treating the injured eye. While, no doubt, the physician recognized at least an ethical obligation between himself and the patient, he was performing the service because the ship employed him to do so, not because the petitioner did. He was not an independent practitioner, called to treat one whose expenses the ship agreed to make good.

The Supreme Court therefore held that the shipowner was "liable in damages for harm suffered as the result of any negligence on the part of the ship's doctor," and the Court proceeded to consider whether there was sufficient proof of negligence to go to the jury, and found in the negative, saying:

> The doctor apparently made a wrong diagnosis, but that does not prove that it was a negligent one. It seemed to be the obvious diagnosis from the history which the patient gave him, and that appears to have been incomplete and not unlikely to mislead. . . . Whether the legislative policy of compensating only on the basis of proven fault is wise is not for us to say, nor is it our function to circumvent it by reading into the law a theory, however disguised, that a physician who undertakes care guarantees cure, and that each unsuccessful effort of the physician may be visited with a successful malpractice suit.

Mr. Justice RUTLEDGE did not participate. Mr. Justice BLACK dissented.

> The issue in this case is: shall a jury or a court decide whether petitioner lost his eye through the respondent's negligence? I agree with the Court that the shipowner was liable for the negligence of its doctor, and I agree further that the Jones Act is not a workmen's compensation act and does not impose liability without fault; but I do not agree that court may substitute its judgment on the facts for the decision of a jury when, as here, there is room for reasonable difference of opinion on the critical issue of the case. I think there was sufficient evidence to permit a jury to find negligence in the doctor's failure to leave the petitioner at Honolulu for hospital treatment.
>
> Directing a verdict against the petitioner in this case is substituting judicial for jury judgment on factual questions which can as readily be decided by the layman as by the lawyer. When we consider the weight of the evidence and resolve doubtful questions such as these, we invade the historic jury function. "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment." . . . This constitutional command should not be circumvented.

Justices DOUGLAS and MURPHY joined in this dissent.

The case was argued by Mr. Herbert Resner for DeZon and by Mr. Edward F. Treadwell for the steamship company.

Income Tax—Corporations—Permitting Profits to Accumulate Unreasonably in Order to Avoid Surtax

The Board of Tax Appeals' conclusion that this corporation was used to prevent surtax on stockholders by accumulating profits is sustained by the Supreme Court.

Helvering v. Chicago Stock Yards Co., 87 L. ed. Adv. Ops. 790; 63 Sup. Ct. Rep. —; U. S. Law Week 4303. (No. 488, decided April 12, 1943.)

The Commissioner assessed fifty per cent additional income taxes against the Chicago Stock Yards Co. for 1930, 1932, and 1933, under the section of the applicable Revenue Acts which provided that if any corporation is formed or availed of for the purpose of preventing the imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, the additional tax shall be imposed. That the corporation "is a mere holding or investment company," or that the gains or profits are "permitted to accumulate beyond the reasonable need of the business," is declared, by subsection (b), prima facie evidence of a purpose to avoid the surtax.

The Board of Tax Appeals affirmed the Commissioner, and the Circuit Court of Appeals for the First Circuit reversed both. The Supreme Court granted certiorari.

The facts were these: F. H. Prince of Boston became the sole owner of the Chicago Stock Yards Co., which, among other assets connected with stock yards activities in Chicago, owned most of the common stock of a New Jersey predecessor corporation. This latter corporation had outstanding preferred stock, mortgage bonds, and fixed obligations of subsidiaries which it had guaranteed. To take up these obligations, and become the sole owner of the entire stock yards enterprise clear of debt except for about $3,000,000 of its own bonds, the Chicago Stock Yards Co. required as of December 31, 1929, the expenditure of about $28,000,000 by 1940, at which time the charter of the New Jersey corporation would expire. At the close of 1929 the "entire stock yards enterprise," just referred to, had cash and liquid assets of nearly $22,000,000, and fixed and other assets of a book value of $40,000,000. On December 31, 1929, the assets of the Chicago Stock Yards Co. exceeded its liabilities, including its capital stock, by over $19,600,000. From that date to the close of 1933 its earnings were over $10,000,000, of which $400,000 a year was paid out in dividends and over $8,600,000 was added to earned surplus.

In the opinion of the Court, delivered by Mr. Justice ROBERTS, he states and analyzes the facts, and says:

> A corporate practice adopted for mere convenience or other reasons, and without tax significance when adopted, may have been continued with the additional motive of avoiding surtax on the stockholders. The Board's conclusion may justifiably have been reached in the view that whatever the motive when the practice of accumulation was adopted, the purpose of avoiding surtax induced, or aided in inducing, the continuance of the practice.
>
> The Board, the court below, and the parties in brief and argument have discussed many facts thought to be relevant to the purpose of the accumulation of surplus by the respondent. The interrelation of the taxpayer and the other corporations involved in the enterprise, the expiration of the New Jersey Company's charter, the policy or obligation of the taxpayer to provide for the payment of the debts of the New Jersey Company and its subsidiaries, the relation of Mr. Prince as officer and active manager of underlying corporations, the financial transactions between him and the respondent, are discussed and arguments pro and con are based thereon in an effort to prove or to disprove the character of the respondent, the necessities of its business, and the nature of the relationship between it and Mr. Prince.
>
> If we eliminate these matters from consideration and treat the respondent as a controller, manager, and, to a large extent, the proprietor of the entire enterprise, we think the Board's conclusion of fact has support in the evidence and must be accepted.

Mr. Justice ROBERTS concludes:

> The respondent's position is that, as the New Jersey Company's charter was to expire in 1940, and as the respondent was under what it deemed a moral, and, indeed, a legal obligation to pay off the mortgage debts of the New Jersey Company and its subsidiaries and to redeem its outstanding stock, the accumulation of earnings was necessary to the preservation of its business. There are two sufficient answers. Mr. Prince, the sole stockholder, if in receipt of the respondent's earnings, could equally well have done what the respondent proposed to do, that is turn accumulated earnings into invested capital. And the evidence shows that the New Jersey Company's charter could have been renewed in 1940. Continuance or refinancing of such an enterprise on the face of things would have been practicable.
>
> We cannot say that the Board's conclusion that respondent was availed of for the purpose of preventing the imposition of surtax upon its stockholders, through the medium of accumulation of its profits, is without substantial support.
>
> The judgment is reversed.

The case was argued by Mr. Assistant Attorney General Clark for Helvering and by Mr. George Wharton Pepper for the Stock Yards Company.

Income Tax—Stock Dividend Not Taxable Unless Proportional Interest of Stockholder Essentially Changed

When the taxpayer, before and after a stock dividend of any kind, owns the same interest in the net value of the corporation, there is no taxable income.

Helvering v. Sprouse; Strassburger v. Commissioner, 87 L. ed. Adv. Ops. 732; 63 Sup. Ct. Rep. 791; U. S. Law

Week 4294. (Nos. 22 and 66, decided April 5, 1943).

These two cases involved the taxation of stock dividends, and the Supreme Court sustained the taxpayer's contention in each case, affirming the first and reversing the second. In each, the earnings available for dividends were in excess of the value of the new stock issued.

In the *Sprouse* case, from the Ninth Circuit, the company had only two classes of stock, voting common and non-voting common. A dividend of non-voting common was distributed to all stockholders, voting and non-voting. Neither the non-voting rights of the voting common, nor its right to share in dividends and in liquidation, was altered by the distribution. Sprouse held only voting stock. The Comissioner of Internal Revenue assessed him on the stock dividend as income, and the Board of Tax Appeals sustained the Commissioner. The Circuit Court of Appeals reversed, and the Supreme Court affirmed the Circuit Court of Appeals.

In the other case, from the Second Circuit, the entire stock of a corporation—200 shares of common—was owned by Strassburger. A new class of stock was created, consisting of 500 shares of preferred. Fifty shares of this new stock were distributed as a stock dividend, all of the distribution going to Strassburger as the sole owner of the existing stock. He did not sell any of his new stock, and no dividends were paid on it. The Commissioner treated it as income to Strassburger, and the Board and the Circuit Court of Appeals sustained the Commissioner. The Supreme Court reversed.

Mr. Justice ROBERTS, in his opinion, said:

> We think the judgment in No. 22 was right and that in No. 66 erroneous. The cases are ruled by *Helvering v. Griffiths* [decided Mar. 1, 1943]. While the petitioner in No. 66 received a dividend in preferred stock, the distribution brought about no change whatever in his interest in the corporation. Both before and after the event he owned exactly the same interest in the net value of the corporation as before. At both times he owned it all and retained all the incidents of ownership he had enjoyed before.

Mr. Justice RUTLEDGE took no part. Justices REED, FRANKFURTER, and JACKSON dissented, expressing the view that *Koshland v. Helvering*, 298 U. S. 441 (1936), required a contrary conclusion. As to this, Mr. Justice ROBERTS said in the majority opinion:

> We think *Koshland v. Helvering* . . . distinguishable. That was a case where there were both preferred and common stockholders and where a dividend in common was paid on the preferred. We held, in the circumstances there disclosed, that the dividend was income but we did not hold that any change whatsoever in the character of the shares issued as dividends resulted in the receipt of income. On the contrary the decision was that, to render the dividend taxable as income, there must be a change brought about by the issue of shares as a dividend whereby the proportional interest of the stockholder after the distribution was essentially different from his former interest.

The case was argued by Mr. Leo Brady for Strassburger, by Mr. Charles E. McCulloch for Sprouse, and by Mr. Arnold Raum for the Commissioner of Internal Revenue.

Copyright—Construction of Statute—Power of Author to Assign in Advance his Right of Renewal

An author can assign his original copyright, and, after he has secured it, the renewal copyright as well; his interest in the renewal can also be assigned by him before the renewal.

Fred Fisher Music Co., Inc. and George Graff, Jr. v. M. Witmark & Sons, 87 L. ed. Adv. Ops. 742; 63 Sup. Ct. Rep. 773; U. S. Law Week 4283. (No. 327, decided April 5, 1943).

This is a copyright case, turning on the construction of the statute. Justice FRANKFURTER, delivering the opinion of the Court, says:

> This case presents a question never settled before, even though it concerns legislation having a history of more than two hundred years. The question itself can be stated very simply. Under § 23 of the Copyright Act of 1909, 35 Stat. 1075, as amended, a copyright in a musical composition lasts for twenty-eight years from the date of its first publication, and the author can renew the copyright, if he is still living, for a further term of twenty-eight years by filing an application for renewal within a year before the expiration of the first twenty-eight year period. Section 42 of the Act provides that a copyright "may be assigned . . . by an instrument in writing signed by the proprietor of the copyright . . ." Concededly, the author can assign the original copyright and, after he has secured it, the renewal copyright as well. The question is—does the Act prevent the author from assigning his interest in the renewal copyright before he has secured it?

The copyright involved was for the popular song, associated with the name of Chauncey Olcott, "When Irish Eyes Are Smiling." The Justice examines at considerable length the history and purpose of copyright legislation, and concludes that an author may make a valid agreement to assign his renewal privilege in advance of the twenty-eighth year of the original term.

> . . . We are asked to recognize that authors are congenitally irresponsible, that frequently they are so sorely pressed for funds that they are willing to sell their work for a mere pittance, and therefore assignments made by them should not be upheld. It is important that we distinguish between two problems implied in these situations: whether, despite the contrary direction given to this legislation by the momentum of history, we are to impute to Congress the enactment of an absolute statutory bar against assignments of authors' renewal interests, and secondly, whether, although there be no such statutory bar, a particular assignment should be denied enforcement by the courts because it was made under oppressive circumstances. The first question alone is presented here, and we make no intimations upon the other. It is one thing to hold that the courts should not make themselves instruments of injustice by lending their aid to the enforcement of an agreement where the author was under such coercion of

circumstances that enforcement would be unconscionable. . . . It is quite another matter to hold, as we are asked in this case, that regardless of the circumstances surrounding a particular assignment, no agreements by authors to assign their renewal interests are binding.

It is not for courts to judge whether the interests of authors clearly lie upon one side of this question rather than the other. If an author cannot make an effective assignment of his renewal, it may be worthless to him when he is most in need. Nobody would pay an author for something he cannot sell. We cannot draw a principle of law from the familiar stories of garret-poverty of some men of literary genius. Even if we could do so, we cannot say that such men would regard with favor a rule of law preventing them from realizing on their assets when they are most in need of funds.

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

Mr. Justice BLACK, Mr. Justice DOUGLAS, and Mr. Justice MURPHY conclude that the analysis of the language and history of the copyright law in the dissenting opinion of Judge Frank in the court below, 125 F. 2d 949, 954, demonstrates a Congressional purpose to reserve the renewal privilege for the personal benefit of authors and their families. They believe the judgment below should be reversed.

The case was argued by Mr. John Schulman for Fisher Co. and by Mr. Robert W. Perkins for Witmark & Sons.

SUMMARIES

Practice in Criminal Cases—Review of Order Sustaining Demurrer to Indictment—Appeal Must Go to Circuit Court of Appeals when Trial Court Assigns Another Ground Besides Invalidity or Construction of Statute

United States v. Swift and Co., 87 L. ed. Adv. Ops. 647; 63 Sup. Ct. Rep. 684; U. S. Law Week 4276. (No. 529, decided March 15, 1943).

This case involved a direct appeal to the Supreme Court from a judgment of a district court setting aside an indictment under the Sherman Act. Such an appeal may be taken only when the trial court's action is based on the invalidity or the construction of a statute. In the present case a number of packers and commission firms were charged with agreeing to purchase lambs only on the Denver Livestock Exchange, instead of buying direct from producers in the country, as had been the practice. The district court dismissed the indictment on the ground that the alleged agreement and practices under it are not in any way shown to have affected the price of lambs or the number of lambs raised, or to have lessened their flow in interstate commerce. This put the decision partly on a construction of the statute, but partly also on an inadequacy of pleading, and, as the second of these two grounds is not sufficient to sustain a direct appeal to the Supreme Court, the Court was without jurisdiction to consider the appeal.

> Such an appeal to this Court does not lie when the district court has considered the construction of the statute but has also rested its decision upon the independent ground of a defect in the pleading.

The previous practice in this regard, the Court said, is confirmed by the amendment of May 9, 1942, to the Criminal Appeals Act, and the appeal must be transferred to the Circuit Court of Appeals for the Tenth Circuit.

The opinion was *per curiam*. Mr Justice RUTLEDGE took no part. Justices BLACK, DOUGLAS, and MURPHY dissented, on the ground that the judgment below was based on a "construction" of the Sherman Act. Mr. Justice JACKSON concurred specially, expressing agreement with the dissenting Justices that "the decision of the district court is 'based' upon the construction of the Sherman Act."

> One-half of the membership of the Court as constituted at the time this case was submitted do not agree with this view. . . . To persist in my dissent would result either in affirmance of the judgment by an equally divided Court or in a reargument. . . . I should not desire to appear committed to this case as a precedent. . . . It seems the most sensible way out of our impasse in the immediate case.

The case was argued by Mr. Charles H. Weston for the United States and by Mr. Kenneth W. Robinson for Swift and Co.

Bankruptcy—Chapter X—Requirements of Good Faith in Filing Petition

Fidelity Assurance Association et al., v. Sims et al., 87 L. ed. Adv. Ops. 725; 63 Sup. Ct. Rep. 807; U. S. Law Week 4290. (No. 319, decided April 5, 1943).

This case presents questions concerning the construction of Chapter X of the Bankruptcy Act. The Fidelity, under a previous name, was engaged in selling annuity contracts. Faced with difficulties, it amended its charter to engage also in the insurance business, and assumed its present name, Fidelity Assurance Association. Its difficulties continued and the Insurance Commissioner and the Attorney General of West Virginia instituted proceedings for the appointment of a receiver in a state court. Officials of other states took similar action for the liquidation of the Fidelity's obligations.

Proceedings in reorganization under Chapter X were instituted, notwithstanding the pendency of the state proceedings. The present certiorari raises two questions: whether (1) the debtor is an insurance company exempted from the provisions of the Bankruptcy Act; and (2) the petition for reorganization under Chapter X was filed in good faith.

In an opinion by Mr. Justice ROBERTS, the Supreme Court finds it unnecessary to consider or decide whether, at the date of filing, the debtor was an insurance company within the meaning of the Act since the conclusion is reached that the petition was not filed in good faith.

Section 146 of the Act provides that "a petition shall

be deemed not to be filed in good faith if . . . (3) it is unreasonable to expect that a plan of reorganization can be effected; or (4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding."

The Court's conclusion on the record is that neither of the foregoing requirements is met in the instant case because: first, the Fidelity can not be reorganized as a going concern; and, second, the interests of creditors would be best served in the pending prior proceedings in the various state courts.

Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE did not participate in the decision.

The case was argued by Mr. Homer A. Holt for Fidelity; by Mr. John F. Davis for SEC; by Mr. H. Vernon Eney for Maryland Insurance Commissioner; by Mr. Richard H. Lauritzen for Banking Commissioner of Wisconsin; by Fyke Farmer for L. H. Brooks, Trustee, and by Mr. J. Campbell Palmer, III, for West Virginia State Court Receivers.

Bankruptcy—Relation to State Receiver when Equity Proceeding Has Not Been Superseded

Emil v. Hanley, 87 L. ed. Adv. Ops. 643; 63 Sup. Ct. Rep. 687; U. S. Law Week 4248. (No. 551, decided March 15, 1943).

This was a contest in state and federal courts between a state court receiver in a foreclosure proceeding and a federal trustee in bankruptcy. The contest was decided in all the courts in favor of the receiver.

The subject-matter of the proceeding was an apartment building in New York City on which there were three mortgages and a number of mechanics' liens subordinate to all the mortgages. The third mortgagee began a foreclosure suit in a state court on August 13, 1940, and Hanley was appointed receiver on August 17. Two weeks later an involuntary petition in bankruptcy was filed against the corporation which owned the apartment house, and subsequently Emil was appointed trustee. The mechanics' liens were foreclosed and the property thereunder was sold to the A. I. Corporation in February, 1941. About four months afterwards the third mortgagee's foreclosure suit went to judgment, but, before a sale was held, the judgment was satisfied by the A. I. Corporation. The trustee applied to the state court to disapprove the receiver's account. The court denied the application. In the meantime the trustee had filed a motion in the federal court for an order directing the receiver to file his account there. This motion also was denied. The Circuit Court of Appeals for the Second Circuit affirmed the district court and the Supreme Court of the United States took the same view, holding that the relevant clause of the Bankruptcy Act, Sec. 2 (a) (21)—a new provision giving large powers to district courts over any receiver appointed less than four months before bankruptcy—applies only when the prior proceeding in the state court is superseded by bankruptcy. The emphasis is placed on *superseding.* The Court, in an opinion delivered by Mr. Justice DOUGLAS, tracing the history of liens that survive bankruptcy, says that Sec. 69d, also relied on by the trustee, must be read in the same way.

> The legislative history suggests that it, too, was designed to apply only where bankruptcy superseded the prior proceedings . . . As stated by the draftsman, "It makes clear and certain the exclusive and paramount jurisdiction of the bankruptcy court over property dealt with in a prior equity receivership or like proceeding which is superseded by a bankruptcy proceeding."

The case was argued by Mr. David Haar for the trustee and by Mr. John P. McGrath for the receiver.

Bankruptcy—Exemption of Homestead Property

G. E. Myers, Trustee, etc. v. Verna May Matley, 87 L. ed. Adv. Ops. 750; 63 Sup. Ct. Rep. 780; U. S. Law Week 4293. (No. 540, decided April 5, 1943).

The respondent's husband was adjudicated a bankrupt on October 24, 1940. On November 20, 1940, the wife filed a homestead declaration on certain land in Reno, Nevada, listed in the husband's bankruptcy schedules. November 27, 1940, the wife filed a petition in the bankruptcy court claiming that the land was exempt. The referee denied her claim, but the district court reversed, and the circuit court affirmed the ruling of the district court.

On certiorari, the judgment was affirmed by the Supreme Court in an opinion by Mr. Justice ROBERTS. Section 70 (a) of the Bankruptcy Act, as amended in 1938, is construed to be the same in substance as it was prior to its amendment, and hence a homestead is exempt if, under state law, it would be held to be exempt. *White v. Stump,* 266 U. S. 310, involving Idaho law, is distinguished on the basis of a difference between Idaho law and Nevada law. An examination of the Nevada law here led to the conclusion that the exemption in that state is effective if the selection and recording occur at any time before actual sale under execution.

The case was argued by Mr. T. L. Withers for Myers and submitted by Mr. William M. Kearney for Matley.

BOOK REVIEWS

Traffic Courts, by George Warren. Foreword by Arthur T. Vanderbilt. 1942. Boston: Little, Brown and Company. Pp. XI, 280. We are all too much inclined to underestimate the importance of the courts that handle traffic cases—of the courts that in this book are labelled "traffic" courts. We call them "lower" courts, and we think of them as occupying a very lowly and unimportant place among our temples of justice.

These courts are important to the public, because the enforcement of traffic laws is intimately related to the public welfare. Traffic accidents in this country account annually for 30,000 people killed, 1,250,000 people crippled, maimed or otherwise injured, and for $1,500,000,000 in direct economic losses. And experience demonstrates that these losses go up and go down, with the fall and the rise in the quality of the functioning of traffic courts.

These courts are important to the public, and they are still more important to lawyers, because it is in these courts that by far the largest number of the American people acquaint themselves with the administration of justice. It is in these courts that they have their most frequent, and often their only, opportunity to see American justice at work. There they gain lasting impressions of judges and of lawyers. And the impressions there gained are rarely favorable.

In recognition of the existence in this country of a very real traffic court problem, the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils in 1938 authorized Mr. Warren to institute a nation-wide survey of traffic courts. In the making of his survey, Mr. Warren made personal contact with many hundreds, and written contact with many thousands, of attorneys general, judges, justices of the peace and others, engaged in and interested in traffic law enforcement; and he made a detailed study of the functioning of traffic courts throughout the country.

This book gives the results of that survey. It details the shocking conditions presently existing in traffic courts. And it sets forth specific recommendations for the improvement of those conditions. These recommendations are not alone those of Mr. Warren. They represent the best thought of experienced traffic court judges and other specialists in the field of traffic law enforcement. And they are approved by the House of Delegates, the Sections of Judicial Administration and Criminal Law, and the Junior Bar Conference, of the American Bar Association; also by The National Conference of Judicial Councils, the Committee on Judges and Prosecutors and the Street and Highway Section of the National Safety Council, and by the International Association of Chiefs of Police.

This book should be required reading for every judge and for every lawyer engaged in the enforcement of traffic laws. And it might profitably be read by members of committees on the unauthorized practice of law, and by other lawyers dealing with unauthorized practice problems, and by all other lawyers who wish enlightenment on the question as to why so many people do not think as highly as we would like to have them think, of courts, of judges, of lawyers, and of American justice. It might well be read by all lawyers who would like to find a field where by diligent and united effort they could remove the cause for much of the public dissatisfaction with the administration of justice—an instrumentality that lawyers have the exclusive franchise to operate—an instrumentality of which a flattering impression is not gained by the hundreds of thousands of Americans who annually see it operate in our traffic courts.

CHARLES A. BEARDSLEY

Oakland, California

The Theory of Competitive Price, by George F. Stigler. 1942. New York: The Macmillan Company. Pp. vii, 197.—Any lawyer whose practice touches on the fields of anti-trust law or trade regulation must keep abreast of the latest in economic theory. Thus as his knowledge of accounting must include the standard approved practices (which he generally affects to despise) so his knowledge of the economic must be more than a sophomoric parrotting of such phrases as the "law of supply and demand." Prof. Stigler's *Theory of Competitive Price* is an interesting book for lawyers who want to keep up generally with economic thought; for anti-trust lawyers it should be required reading.

Competition as defined by Prof. Stigler has a purely theoretical meaning, for he uses the term throughout his book as encompassing a situation wherein no individual seller or buyer has appreciable effect upon a market. Competition of the type postulated by Mr. Stigler has never fully existed in practice; the Supreme Court has recently held that even the acts of an individual wheat-farmer substantially affect competition in interstate commerce.[1] This decision eliminates what is often given as a classical example of a seller engaged in atomistic competition.

The author's title "Theory of Competitive Price" is thus well chosen to describe this type of competitive price which can exist only in theory. This theoretical approach of the professional economists should not serve to condemn this book, for the discussions of the author are provocative of profound thought on economic problems. It has been commonplace to liken the economist who formulated the laws for his science,

1. *Wickard* v. *Filburn,* No. 59. U.S. Sup. Ct., November 9, 1942.

based upon certain hypotheses which cannot be attained in real life, to the chemist or physicist who assumes a perfect vacuum which no one has yet created, and then formulates laws based on this assumption. A real question should be raised as to whether this is a legitimate comparison. The physicist is dealing with minor variations in measurable physical phenomena, while the most important variation which is introduced into the economists' perfect world is the effect by one individual buyer or seller upon price and market conditions. Were each such individual an automaton whose reactions could be perfectly predicted, then the comparison would be proper. But, as any student of behavior must admit, the reactions of each potential seller are different so that it is impossible to gauge the exact extent to which the conduct of an individual buyer or seller will vary from what an economist might expect from his theoretical analysis. It is, consequently, very important, in applying these economic rules, to make sure that the deviations from the assumed perfect or ideal conditions do not substantially affect the value of the resultant theory.

Throughout *The Theory of Competitive Price* the author promised to tackle, in Part II, the "question of when a price influence (by a particular company) is perceptible."[2] The book never reaches this point. This is unfortunate, because everyone must recognize that the competition existing in modern industry necessarily involves a situation where the price policies and practices of each individual seller can and do affect market prices and conditions.

A lawyer in reading economic treatises will soon recognize that many economists use the same terminology as the anti-trust laws but with entirely different definitions. Thus whenever there is common course of action, whether pursuant to an agreement or dictated by individual self-interest, some economists have said, "This necessarily implies agreement either voluntary or involuntary, induced through fear or favor . . ."[3] Lawyers have long recognized that a mere common course of action was not illegal unless it was pursuant to a previous agreement.[4] Another line of divergent interest between some economists and lawyers results from the economist's appraising a company's price policy from the point of view of its social result. The lawyer, on the other hand, is limited under the anti-trust laws to a few specific tests. He cannot philosophize about how a different course of action might have produced a more socially desirable result. The sole question for the lawyer is whether the company's acts were pursuant to an illegal agreement.

These economic discussions have led some to speak of the disappearance or decline of competition,[5] when what was really meant was that the kind of competition they found in a highly industrial society was not the same that the classical economists had led us to believe would exist. This has led some economists to turn their thoughts toward considering a working or realistic concept of competition. Much has been written, but the lawyer who is interested in only touching the highlights should supplement reading of Prof. Stigler's book with Dr. J. M. Clark's essay, "Toward a Concept of Workable Competition."[6]

Prof. Stigler has two interesting chapters treating pricing under competition. It is here that the book discusses the theory of competitive price. For purposes of analysis he distinguishes three types of price under competition, a "market price," a "short-run normal price," and a "long-run normal price." The Adam Smith school of economics would of course treat market price as covering an indefinite time and thus embracing all three concepts. The divisions offered by Mr. Stigler seem workable as dividing the field along the lines of thought usually adopted by businessmen.

Much of Prof. Stigler's discussion is not only instructive as far as the anti-trust lawyer is concerned, it is also of interest to all non-economists. Actually the algebraic and analytical-geometric illustrations of the text are due to the advanced nature of the book rather than to any theoretical method of approach. Indeed the author is far from over-theoretical in his approach to certain phenomena, such as those involved in identical price. Thus he observes of this phenomenon, which has so perplexed some theoretical economists, "Under competition it would be impossible to pay different prices for various units of a homogeneous product."[7] It is significant that the author was here talking of "perfect" or "pure" competition. His statement, therefore, would evoke no quarrel from such classicists as Dr. Fetter on the one hand or such realists as Prof. J. M. Clark on the other. This idea of competitive price is continued by the author in discussing his "long-run normal price" by assuming that such a long-run price for a homogeneous product would be only one price, which would eventually take into account advantages of location possessed by some entrepreneurs. The way he works it out is this: the firm with the low transportation cost would eventually pay rent equal to the value of its preferred location and thus over the long-run period prices would tend to equalize. In other words, the author assumes that the rent, transportation costs, and all such items go into the eventual price of the commodity sold. While this approach has the merit that it tends to idealize the problems of a businessman rather than to raise straw men to perplex him, it nevertheless hardly explains the process which businessmen really go through in setting up a competitive price, either from a long or a short term point of view.

This favoring of the practical does not go nearly as far as it might have gone. Thus it falls far short of ad-

2. Page 21.
3. V. A. Mund, *Monopolistic Competition Theory and Public Price Policy*, 32 Am. Econ. Rev. 727, 733 (1942).
4. For a recent case see *Salt Producers' Assn.* v. *Federal Trade Commission*, March 8, 1943 (C.C.A. 7th).
5. *The Decline of Competition*, by A. R. Burns (1936).
6. 30 Am. Econ. Rev. 241 (1940).
7. Page 106.

vocating everything that aids mass production. Indeed, certain situations not commonly recognized, wherein mass production would be no longer profitable, are pointed out. At one place the author points out that the indivisibility of certain fixed costs makes for businesses being either underworked or overworked at most stages of production.[8] This itself will serve as a limitation on size. A more important limitation on mass production arises from the fact that under the theory of pricing developed by the author competitive industries commonly run at a rate of operation beyond the point where costs are lowering and at a point where costs are increasing.[9] Operations at a point where costs are decreasing, the author views as an attribute to monopoly.[10]

These last concepts are important today, when war economy has upset our productive balance. That is, where requisition and government cajoling carry production to a point beyond the place where costs first tend to rise, much of the consequent rise in cost is then due to this change forced on industry. In other words, all cost rises under the forced production of war should not be taken as indicating either inefficiency or restraint of trade.

JAMES R. WITHROW, JR.
New York City STANLEY LAW SABEL

The Pullman Strike, by Almont Lindsey. 1942. University of Chicago Press. Pp. 385—Here is the story, vividly told and thoroughly documented, of one of the most serious industrial-labor controversies in our history. Not only the Pullman Company and its employees were involved but before the strike ended most of the great railway systems of our country and their employees were brought in. The United States Government, too, became a party to the conflict and President Cleveland and Governor Altgeld of Illinois became involved in a historic controversy over the right of the President to send the military forces of the United States into a state to deal with a local disturbance without the consent of the state authorities.

The story begins with the development of the Pullman corporation, organized to exploit the sleeping car which Pullman had invented, and the building of the "model town" which Pullman had conceived as a method of attracting skilled and reliable workers. It then proceeds with the account of the strike.

It is difficult to tell the story of this conflict without manifesting some degree of partisan bias, but Prof. Lindsey, it seems to me, has succeeded. He has given the facts as he has found them after a thorough investigation and has let them speak for themselves.

The strike grew out of the action of the Pullman Company in reducing wages in the depression of 1894. The construction department was losing money at the time, but the operating department was showing a profit and the earnings of the corporation were sufficient to enable it to pay a dividend of 8% and yield a surplus of $2,320,000. Although the wages of the workers in the factories were reduced the rents charged for their homes (rentals higher than those charged for similar living places in Chicago) were not, nor were the salaries of the corporation's executives cut. The members of the grievance committee of the workmen which had waited on the officers of the company pleading for consideration were discharged and the strike followed. The strikers appealed to the recently formed American Railway Union for aid. This organization by peaceful methods had lately won a strike against James J. Hill's Great Northern Railway. Eugene Debs, head of the union, believed that strikes could be averted if employers and employees would sit down together and reasonably consider each other's rights. In the strike against the Great Northern every precaution was taken to prevent lawlessness, and without any overt act the road was so completely tied up that no cars moved except the mail trains. The strike was won in eighteen days and the difference between the railroad and its employees was settled by arbitration. When the Pullman workers called on the A. R. U. for help, Debs and the other officers of the Union counselled restraint and delay but the Pullman employees felt that their only hope lay in an immediate strike of the railroad men and it was ordered. Switchmen refused to switch Pullman cars and were discharged, others followed the example of the switchmen and cessation of work ensued swiftly throughout railroads centering in Chicago.

Then the General Managers Association came into action against the employees. This association was an organization of the general managers of the railroads and through them the railroads acted as a unit.

The events that followed in quick succession, the tie-up of much of the railroad's business through inability to fill the strikers' places, the intervention of the administration at Washington on behalf of the railroads, the appointment of the general counsel of the General Managers Association for the purpose of instituting civil and criminal proceedings against strikers, the controversy between President Cleveland and Governor Altgeld, are fully told with abundant citation of authorities for the statements made by the author.

This strike was a dramatic episode in our history and this story of conflict of social forces as told by Prof. Lindsey is an important contribution to the history of the times.

Chicago WILLIAM H. HOLLY

The Strength of Nations: A Study in Social Theory, by George Soule. 1942. New York: Macmillan. Pp. 268.—We have read a good deal about the cultural lag and the failure of the most civilized countries to follow the

8. Page 133.
9. Page 163-4.
10. Page 165.

light of science and philosophy in dealing with the complex problems of modern society and highly organized and mechanized industry. We have also read and heard a good deal about the flight from reason and the return to barbarism and savagery. What is the matter with *homo sapiens*? Why can't he settle down, stop fighting and wasting his human and other assets, enjoy peace and abundance, realize his professed religious and ethical ideals? Why are the social sciences so impotent?

Mr. Soule, one of the editors of *The New Republic*, the ablest organ of advanced liberal opinion in the United States, attempts in his latest book to answer these questions. Unlike other writers of the liberal and non-revolutionary radical schools, Mr. Soule draws heavily on Freud and psychoanalysis in his account of the world crisis as well as in his positive suggestions. He is thoroughly familiar with the literature, and shares none of the serious misconceptions of which Freud and his more critical adherents have been the innocent victims.

Mr. Soule does not pretend to solve the riddle of man. But he submits valuable tentative remedies. He is convinced that the social sciences, in conjunction with the new psychology and the new therapeutics, which have rehabilitated thousands of individual patients, can save whole societies from destruction or chaos. If Freud directed attention to the aggressive and predatory emotions, he also provided the techniques of substitution, redirection and sublimation. The moral equivalents of war, interclass or internation, hinted at by William James, Freud developed with profound insight.

Mr. Soule does not despair of the masses. He does not believe that our problems are insoluble. He even proposes a social-science center, modelled upon the modern medical center, an institution that should carry on research, teach students and advise lawmakers and executives sincerely desirous of impartial and scientific guidance. He is a vigorous advocate of planning, and in other works has met the more plausible objections to the policy of deliberate and intelligent planning.

The book under notice is unique and sound. It should be read with care and open-mindedness.

VICTOR S. YARROS

La Jolla, Calif.

RECENT PUBLICATIONS

CIVILIAN DEFENSE MANUAL ON LEGAL ASPECTS OF CIVILIAN PROTECTION, prepared by the American Bar Association for the United States Office of Civilian Defense. 1943. Washington, D. C.: United States Government Printing Office. Pp. ix, 240.

CONSTITUTION-MAKING IN A DEMOCRACY: THEORY AND PRACTICE IN NEW YORK STATE, by Vernon A. O'Rourke and Douglas W. Campbell. 1943. Baltimore: The Johns Hopkins Press. Pp. xiii, 286. $2.75.

WARTIME PROBLEMS OF STATE AND LOCAL FINANCE, symposium conducted by the Tax Institute November 27-28, 1942, New York City. 1943. Philadelphia: George S. Ferguson Co. Pp. ix, 267. $2.50.

WILSON'S IDEALS, edited by Saul K. Padover. 1943. Washington, D. C.: American Council on Public Affairs. Pp. 151. Cloth, $2.50, paper, $2.00.

COLLECTIVE BARGAINING SYSTEMS: A STUDY OF UNION-EMPLOYER RESPONSIBILITIES AND PROBLEMS, by Frank C. Pierson. 1942. Washington, D. C.: American Council on Public Affairs. Pp. x, 227. Cloth, $3.25, paper, $2.50.

LIBERTY CONCEPTS IN LABOR RELATIONS, by Byron R. Abernethy, introduction by Roger Baldwin. 1943. Washington, D. C.: American Council on Public Affairs. Pp. xi, 119. Cloth, $2.50, paper, $2.00.

INTEREST AND USURY, by Bernard W. Dempsey, introduction by Joseph A. Chumpeter. 1943. Washington, D. C.: American Council on Public Affairs. Pp. xii, 233. Cloth, $3.50, paper, $3.00.

JUDICIAL COUNCIL OF THE STATE OF NEW YORK, Ninth Annual Report and Studies. 1943. Albany: Williams Press, Inc. Pp. 370.

INCOME, ESTATE AND GIFT TAX PROVISIONS OF THE INTERNAL REVENUE CODE. 1943. Chicago: Commerce Clearing House, Inc. $2.

TROUBLE-SHOOTER: The Story of a Northwoods Prosecutor, by Robert Traver. 1943. New York: The Viking Press. Pp. 294. $2.75.

HOUSE OF DELEGATES

(Continued from page 265)

there will be outright confiscation of this property. The Alien Property Custodian denies this, but there is nothing in any of their papers which will lead you to that view. This is one point upon which our Committee has divided. Our recommendation will be changed from what appeared in our printed report.

"We have always been opposed, as a nation, to confiscation of the property of individuals, even in war. Our Committee is unanimous in that we are opposed to confiscation of property as such, under these circumstances, but the majority of us feel that the question should not be raised now."

Chairman Henderson explained that two members from the Section of Patent Law, one from the Section of International Law, and himself, took this view. As reason for it, Mr. Henderson referred to recent receipt of *Lloyd's Law List* for February 4, 1943, wherein is reported the case of *Van Udens* v. *Sovfracht*, in the House of Lords, involving charters containing a London arbitration clause.

Consideration of Confiscation in the British Courts

Chairman Henderson stated that "The Dutch corporation went into the British courts to enforce the arbitration agreement. It was successful until it reached the House of Lords. The House of Lords reversed completely all the lower courts on this ground: Here is property of an enemy-occupied country. The House of Lords took the position that necessities of war are not safeguarded by allowing an enemy alien to maintain a suit but depriving him of the fruits of the suit, at least temporarily, by having the same impounded by the Alien Property Custodian.

"The House of Lords held that the Dutch corporation, which had been taken over by Germany, had no right to use the English courts, even though their twenty-four vessels were all in England, all out of Holland, and only certain small corporate trappings were left in Holland. The tribunal seemed to recognize the sovereignty of Germany as in complete charge of Holland. They therefore denied the Dutch corporation the right to use the English courts to sue, upon the ground that if the House of Lords allowed them the right to sue and then the property was impounded and the Alien Property Custodian took the matter over for determination after the war, as to the rights of the foreign enemy, then the foreign enemy would take that right, such as it was, to a neutral such as Sweden or Switzerland and pledge it for the borrowing of money or barter and get supplies to use against England and wage war against them.

"We do not have to follow the House of Lords, but four out of seven of your Committee do not feel that at this moment it is necessary to pass upon this question of confiscation. None of us believes in confiscation, but we do not want to aid the enemy. The question of confiscation can be left until the war is won, when Congress can pass such legislation as it then sees fit to take care of that problem."

Recommendations by the Committee as to Alien Patents Are Adopted

Chairman Henderson then presented the first recommendation, concerning management of foreign-owned patent rights, on which his Committee was agreed:

> RESOLVED, That patent rights of the nationals of actual enemy countries should be seized and sold or administered so as to be made available to American industries during the war and thereafter, but only upon the payment of a reasonable sales price or of royalties, resulting in a fund for ultimate disposition by Congress on such terms as may be established by treaties of peace.

This was adopted. The second recommendation under this head, also adopted, was:

> RESOLVED, Further, that alien patents should not be treated differently from other forms of property in respect of policy adopted as to confiscation.

The third recommendation of the Committee was:

> RESOLVED, Further, that patent rights owned or controlled by nationals of occupied countries should not be licensed until after a hearing in each case at which the diplomatic representative of the occupied country in question or the actual agent of the patentee shall have approved the license in question.

Mr. William R. Vallance and Mr. John Kirkland Clark asked that the word "enemy" be inserted before the word "occupied," in both places in the resolution. This was acceptable to Mr. Henderson. The motion as thus amended was adopted by the House.

Mr. Henderson's fourth proposal was adopted, as follows:

> RESOLVED, That where an agent of a foreign non-enemy owner or his diplomatic representative expresses a desire to prosecute an application for patent, acting directly through an attorney of his selection, he should be allowed to do so. The attorney of record should be allowed to continue in the case if he is willing to assume the responsibility thereof.

The fifth recommendation was adopted, as follows:

> RESOLVED, That pending applications of a foreign non-enemy owner should be treated in the same manner as applications of United States nationals and not laid open to inspection.

The sixth recommendation was likewise adopted, as follows:

> RESOLVED, That the United States agent of a foreign non-enemy owner of a patent or his diplomatic representative may manage the business of the patent of such a national, including the power to sue for infringement.

The seventh recommendation was also adopted, after the insertion of the word "enemy" before the word "occupied," as follows:

> RESOLVED, That where there are no diplomatic relations with the government of an occupied country and where the owner of the patent is not represented in the United States by an agent having power to act, the patent rights of nationals of such countries should be dealt with like the rights of nationals of designated enemy countries.

The eighth and concluding recommendation, concerning patent rights, with a minor amendment suggested by Mr. Vallance for clarity and ac-

cepted by Mr. Henderson, was adopted in the following form, to implement and make effective the action of the House on the seven previous recommendations:

RESOLVED, That the House of Delegates empower the Secretary to transmit the foregoing recommendations to the Department of Justice, the Department of the Treasury, the Secretary of State and the Alien Property Custodian, and that this Committee or a new Committee be instructed and empowered to follow up the recommendations and cooperate with the Departments and the Alien Property Custodian, with a view to bringing about such changes in regulations and practices as may be required to give effect to the recommendations.

On motion of Mr. Thomas B. Gay, the evening session recessed at 10:40 o'clock, until 10 o'clock Tuesday morning.

FOURTH SESSION

MANY matters which were brought before the House at its concluding session evoked spirited debate and on a few of them there were close divisions on the vote. A resolution to disapprove the McKellar bill (S. 575) as to federal employees was laid on the table. The reports as to membership and the budget were deemed most gratifying under the circumstances. The bill (H.R. 1025) to give specific statutory authorization and support for the Federal Board of Legal Examiners was heartily approved. A "closed shop" among municipal employees was opposed. Former President Lashly spoke earnestly for support of the American Bar Association Endowment. Dean Harno discussed movingly the plight of the law schools, the shortage of young lawyers and the problems of maintaining standards of education and admission.

THE concluding session of this mid-year meeting was called to order promptly at 10 o'clock. Chairman Crump announced, with great regret, that Mr. Chauncey E. Wheeler, State Delegate from Rhode Island, and a leader in the work of the House since it was created in 1936, has found himself compelled to so confine his activities that he cannot take part further in the work of the House. Accordingly, his resignation from the Rules and Calendar Committee was reluctantly accepted. Chairman Crump appointed Mr. Loyd Wright, of California, to succeed Mr. Wheeler on the Committee.

Mr. Edward W. Allen, of the State of Washington, presented the report of the Section of International and Comparative Law and its Committee on International Legal War Problems. As its recommendations dealt chiefly with projects in the nature of planning for post-war conditions, the debate and actions thereon are reported elsewhere in this issue, in an article which brings together the several matters in this category which engaged the best thought of the House.

The report of the Committee on the Economic Condition of the Bar, by Chairman Charles B. Stephens, of Illinois, contained no recommendations for action. It was received and filed. The report of the Committee on Civil Service, created at the 1942 meeting of the House in Detroit, was presented by Mr. Murray M. Shoemaker, of Ohio, in the absence of the chairman, Mr. Murray Seasongood, also of Ohio.

Recommendation Opposing the McKellar Bill (S. 575) Is Debated

The first resolution submitted in behalf of the Committee on Civil Service was as follows:

Whereas, Senator McKellar has introduced a bill (S. 575) which, as amended, would allow no one to be hired at a salary of $3,800 or more without senatorial approval, and further provides that the appointment of all federal employees now at this and higher salaries shall expire June 30, 1943, and thereafter be subject to senatorial confirmation; and

Whereas, this House in July, 1938, adopted the following resolution:

"RESOLVED, It is the duty of the Bar to uphold the merit system in public employments; to seek its wider adoption and better enforcement in national, state and local governments; to demonstrate its applicability to legal positions in the public service; to attract young lawyers to a career of holding legal positions in such service; and to increase confidence in administrative agencies on the basis of such agencies being officered and staffed by persons appointed because of merit and divorced from suspicion of political influence."

and in September, 1940, adopted the following resolution:

"RESOLVED, That, in the opinion of this Association, it is desirable that lawyers in public positions, including examiners and staff of administrative agencies, but not including elective and policy-determining heads, be employed so far as practicable under the merit system with the aid of competitive examinations, and that this Association further such method of selection."

and

Whereas, this House in September, 1942, in creating a Special Committee of the Association on Civil Service, prescribed that it should

"study the laws, decisions and practices governing the civil service of the nation, the states, and their subdivisions, and make recommendations for the improvement of its administration."

Whereas, if a bill such as the McKellar bill, as amended, should be passed, it would be a disastrous blow to the effectiveness in office of career men in legal and other positions in the federal service and would prevent many men of ambition and initiative from seeking to enter such service,

RESOLVED, That the American Bar Association opposes the passage of the McKellar bill (S. 575), as amended, or any similar bill, as constituting an assault on the federal merit system, now in its fiftieth year, and calls on the Congress and all persons interested in the merit system to unite in opposition.

Secretary Knight reported that the Board of Governors transmitted the resolution without recommendation, but "with the comment that, in the opinion of the Board of Governors, the first recommendation is beyond the jurisdiction of the House, except in so far as it relates to federal employees concerned with the ad-

ministration of justice who are under classified civil service."

Mr. William Logan Martin Defends the McKellar Bill

State Delegate William Logan Martin, of Alabama, took the rostrum to make a vigorous defense of the McKellar bill (S. 575). "It is not an assault on the civil service," he declared.

"Many Acts of Congress have been adopted in states of emergency, which have become common, in which boards or commissions created by such Acts of Congress have been authorized and directed to employ their counsel, their examiners, their accountants and other personnel, without respect to the Civil Service. Examples of such boards or commissions I might cite are the Department of Agriculture, with respect to some additional duty imposed on it a year or so ago, the nature of which I do not now recall, the Bituminous Coal Consumers' Counsel, the Civil Aeronautics Board, the National Archives Council, the Securities and Exchange Commission, the Selective Service, the U. S. Maritime Commission, and probably others.

"Their method of procedure, as I am informed, is to build up their personnel solely outside the Civil Service, amounting, no doubt, to thousands of employees. By authority of the President, who is authorized to blanket these employees into the Civil Service, they then come under its terms, at times without examination, at other times with non-competitive examinations. As I understand the McKellar bill, it is for the purpose of sifting the employees, a great many of whom have entered the Civil Service under such circumstances as I cited.

Mandates Against Bureaucratic Control

"We cannot escape that there is a political problem in this. The present Congress has been elected to the House with a special mandate with respect to bureaucratic control. One-third of the Senate has been elected with the same mandate.

"There are resolutions which have been adopted by the present House, which may have been adopted by the Senate, or at least are on the calendar of the Senate, which call for investigations into bureaus and boards and commissions. There are some nine of them, as I recall it, six resolutions and three bills, which go to the fundamental principles of the government of this country.

"One of them, you may recall, is the Smith resolution of the House which has just been organized for the purpose of inviting complaints by the American people of assumptions of authority by bureaus, of usurpation of the powers of Congress in making rules and regulations. That commission has a real service to perform. There you can lodge your petition, if you have a complaint against any usurpation of authority.

"Mr. Hatch, for instance, has introduced an administrative law bill which we have been fighting so hard to get. Mr. Gurney, I believe, has introduced a bill to suspend the power of the SEC with reference to proxies, for the duration of the war.

"The McKellar bill is a plan to recover the constitutional powers of this country from the bureaus and commissions and boards which have usurped them in the past few years."

Resolution Opposing the McKellar Bill Is Tabled

At the close of this earnest plea, which evoked the applause of the House, Mr. Martin moved to lay on the table the resolution condemning the McKellar bill. This motion was adopted by the House, without a division.

"Pinch-hitting" for Chairman Seasongood, Mr. Shoemaker moved the Committee's second recommendation, in the following substitute form worked out with the Committee on Draft:

> Whereas, there has been created within the United States Civil Service Commission a Board of Legal Examiners which, acting in consultation with the Commission, is charged with the duty of developing and administering the merit system for lawyers in the employ of the United States Government; and
>
> Whereas, this Board received an appropriation for the fiscal year 1943 and has thereby been enabled to develop its program to the point of demonstrating fully its value to the government and its significance to the legal profession;
>
> Whereas, the Congress is now considering legislation to give specific statutory authorization to the Board, the passage of which has been made a condition of further appropriations for the work of the Board,
>
> RESOLVED, That the Congress be and it is hereby petitioned to adopt the legislation above-mentioned (H. R. 1025) and to make necessary appropriations for the continuance of the work of said Board.

Mr. John Kirkland Clark strongly supported the resolution. Former President Walter P. Armstrong then took the floor to say:

"This bill is now on the consent calendar of the House of Representatives for April 5. Inquiries were made, at the call of the last consent calendar, as to the attitude of this Association. The matter then went over without prejudice."

He suggested an amendment of the last paragraph by the addition of the following: "and that the Secretary of the Association be instructed immediately to send to every member of the House of Representatives and the Senate of the United States a copy of this resolution."

After the bill had been read in full to the House, Mr. Armstrong's amendment was adopted, and the resolution as amended was adopted, without opposition.

A third recommendation by the Committee on Civil Service was reserved, at the suggestion of President Morris, until it had been procedurally cleared.

Mr. Simmons Makes Encouraging Report as to Membership Work

The report of the Committee on Professional Ethics and Grievances contained no recommendations for action. It was received and filed, on the motion of Judge Frederic M. Miller, of the Supreme Court of Iowa.

A gratifying report which received the hearty approbation of the House was next given by Mr. David A.

Simmons, of Texas, Chairman of the Special Committee on Membership, created in Detroit last August. Commenting on the interesting statistical analyses contained in his printed report, Mr. Simmons pointed out:

"We find that in the average year the American Bar Association loses 2,256 members. Those must be replaced. Last year we took in 1,716 and the year before 1,609, obviously a loss of 1,000 members in the last two years. We have lost 2,859 members to the military service, and have forgiven dues to the extent of $16,000. We figure that is a little more than offset by the splendid work done by Mr. Wham's Committee on Ways and Means, through sustaining memberships. That does not solve our over-all problem. We must make this Association grow.

"As of March 15 this year, we have so far lost, by deaths, resignations and non-payment of dues, 1,920 members. New members taken in are 1,762. This is not an impressive figure, but even so you will note that, despite the conditions, it is a little more at this time than it has been at the end of the fiscal year, in either of the two years last past.

"Headquarters is handicapped in the spring on membership matters, because we have a provision in the By-Laws that in the fourth quarter you can join the Association by paying $2 or, if you are a Junior, by paying $1. The statistics show that it costs $3.12 to put each application on the books. So it isn't good business to get membership in the spring; but we are accumulating statistics, the lists you have been sending in, the lists you will send in, and by the last of May the Headquarters will make a real drive for members in June. So that I believe at the end of the fiscal year we can report substantial progress to you. Miss Guernier of Headquarters is one of the most efficient persons I know and has done a splendid job. Under our present plan, we are getting a much higher percentage of results from letters than ever before."

The report was then received and filed, amid applause.

Resolution Against a "Closed Shop" Among Municipal Employees Is Adopted

President Morris then read correspondence with the Chairman of the Section of Municipal Law and the Chairman of the Committee on Civil Service, as to the latter's third recommendation. He stated that it had taken the proper course for action by the House.

Mr. Maguire, of Oregon, offered the following resolution, which was adopted, without a division:

> RESOLVED, That the objective of a closed shop for municipal employees is not a permissible one, since it is inconsistent with the principles of the merit system.

Mr. Thomas B. Gay then moved separately the approval of amendments of the By-Laws of each, the Section of Insurance Law and the Section of Taxation.

In the absence of Major Edgar B. Tolman, who was on vacation, Mr. Gay then made the report of the Board of Editors of the AMERICAN BAR ASSOCIATION JOURNAL. The report was approved.

Budget Committee Reports as to Financial Problems

Chairman Sylvester C. Smith, Jr., of New Jersey, gave the report of the Budget Committee, saying, in part:

"First we call attention to the fact that last year we were able to operate the Association in the black. In the current year's operations up to February 28, although the Budget Committee had estimated a direct income from dues, investments, Journal advertising, etc., of only $225,000, we actually collected $229,000. That was about $4,500 less than the year before, when we had fewer men in service. We have had a loss in income from men in service, in dues, of $16,000, which will probably be increased to $20,000.

"Splendid work which is being done by Mr. Simmons has had an effect upon the direct income of the Association. Mr. Wham's committee has actually raised approximately the amount of money we lost from dues of members in service.

"During the year we have been compelled to suspend the publication of two periodicals which were subscription periodicals. One was the *Bill of Rights Review*. It was due substantially to the loss of manpower. It was a splendid publication. We have had many letters which indicate that the writers want to help reestablish this later.

"We had also to suspend the Municipal Quarterly and Monthly Survey Notes which the Section of Municipal Law felt was very worth while. The editorial work was carried on substantially by New York University Law School. Mr. Freeman, provost of that school, advised the Budget Committee and the Section that their budget could no longer stand that cost. They had already expended some $6,500 on that work. It was a good publication."

The report of the Budget Committee was regarded as highly favorable thus far, under the wartime circumstances. On motion, the report was approved by the House.

Former President Lashly Tells of the American Bar Association Endowment, Inc.

Former President Lashly told of the beginnings of the effort to create and add to some funds by way of an endowment for work of the Bar. Corporate formalities have been completed. Some contributions, totalling only about $2,000, have thus far been received. Mr. Lashly appealed to the members of the House to put forth their best efforts to obtain additions to this fund, as opportunities come to them.

"A little while ago, a lady came into my office," he said. "She had been left a million and one-half dollars, and she was unused to it. She had not had business experience. Her mother and those before her had accumulated it and left it to her. I was attempting to make her will. She had a young son, just about eight years old. She did not know whether he would survive her or not; she couldn't know. We drew a trust and

took care of him for his lifetime—a lot of money for him, enough to spoil two or three boys, I guess.

"I said: 'Now, what will we do with the balance of it, the remainder?'

"She said: 'Well, I don't know. What do you think I ought to do?'

"I said: 'How about your nephews and nieces? You have a large collateral family.'

"She said: 'No, they all got the same share from my mother's estate that I did, and they are all taken care of. Anyway, I don't get along with them so well. They go their way and I go mine.'

"I said: 'How about some charitable contributions? Here is the United Charities. I happen to be interested as a member of the Executive Committee of the Community Fund, and there are some of the finest charities, I suspect, in the world that just need money so badly now to do things.'

"She said: 'No, I think I will attend to my giving while I am here and see what they do with it. I don't believe I will give any to them.'

"I said: 'Now, you have got a million and one-half dollars, madam. You can't give it to your relatives; you won't give it to charities. You don't want to give it to your church.'

"She said: 'Mr. Lashly, I really have a problem, haven't I?'

"I said: 'I will tell you what you do. You just take it along with you when you die.'" (Laughter)

"After a minute she began to laugh a little and she said: 'I am silly, ain't I?'

"I said: 'I don't know whether you are silly or not; you get to the point where a great many people get one day. It is when they have grown old and all of their young people are self-supporting and maybe more prosperous than their old folks are. You have given them too much already.

Lawyers Should Remember the Endowment Fund

"Their friends have all died and gone, and along in the late autumn of their lifetimes they are meeting the curtain which is about to fall, and, as they look over there in the purple horizon of the area that is beyond, they don't know what to do with their money. Sometimes a lawyer might be in that situation. You might want to put something in the American Bar Association Endowment. The Association Endowment would take it and hold it and invest it and use the income from its original capital and reinvested capital to do something to carry on the ideals and the principles of the profession of the Bar in America.

"It seems to me it would be a good thing to have a clause in one's will, to do that thing with some of the little amount we may leave behind. It might be that some lawyers would want to give something now, for that was the practical aspect of this lady that I told you about. She would like to give, and she had worked.

"The American Bar Endowment can be built up to a place of national usefulness to the profession and, through the profession, to the country. As the laws are constituted now, we are advised and believe that such gifts would be deductions from income taxes, and that such gifts would be deductions in order to arrive at the net estate for death and succession taxes. It would take the same status in connection with taxes as a gift to the Community Fund or the War Charities Fund would.

A Young Soldier Shows His Interest

"I brought here a letter which Mr. Barkdull, Secretary of the Board, had received from Judge Guthrie, of Iowa, the Treasurer of the Board. Judge Guthrie quoted to him a paragraph from a letter that helped me a good deal, and I thought it would help you, and that you would like it. I just wanted to read it to you. Here is a young man who is just going to war. He said:

" 'As I turn the key in my desk to leave the practice of law and enter the military service of my country, I cannot help but reflect upon many pleasant associations with my brothers of the Bar in the activities of the American Bar Association. In tribute to those memories and to the fine work of the Association, I am enclosing my check for $25 payable to the American Bar Association Endowment, which I hope will be of some help in carrying out the splendid purposes for which this fund has been established.'

"That was just $25, but that letter helped us and it encouraged and cheered us a good deal, and I wanted you to hear it. The American Bar Association Endowment has now been established on its foundation. It is *your* Endowment. It represents your medium for doing certain things." (Applause)

Other Reports Are Received and Acted On

Chairman W. Leslie Miller reported for the Section of Commercial Law, and moved the following resolution:

> BE IT RESOLVED, That the American Bar Association favors the continued judicial administration of debt adjustments under amplified powers, if necessary, to meet wartime emergencies, rather than the creation of an administrative agency for such purpose; and be it
>
> FURTHER RESOLVED, That the Section of Commercial Law of the American Bar Association be empowered to study and recommend amplification of present laws, if necessary, to meet wartime emergencies and to oppose legislation which has for its purpose the substitution of an administrative agency for the judiciary in the matter of debt adjustments.

The resolution was adopted by the House. Chairman Clement F. Robinson, of Maine, for the Section of Insurance Law, made a brief statement of its intensive work as the largest dues-paying Section, and reported that under the newly adopted by-law of the Section, providing for two vice chairmen, Mr. Frank E. Spain, of Alabama, had been elected second vice chairman.

Chairman Joseph D. Calhoun reported briefly and enthusiastically for the Junior Bar Conference. He referred feelingly to the fact that some 1,700 of its members are serving in the armed forces of their country. Approval of the Conference's recommendations for improving the

work of the Traffic Courts was voted by the House.

Problems of Legal Education and Admissions to the Bar

Chairman Albert J. Harno, of Illinois, reported graphically the serious problems with which the Section of Legal Education and Admissions to the Bar is having to deal. "No part of the broad field of education," said he, "has had so drastic a decrease in its enrollment of students as the law schools. A poll of the schools approved by the American Bar Association, taken by the Council of your Section last fall and again a few weeks ago, showed that these schools in 1938 had a combined enrollment of 28,174 students; that in 1941 the number enrolled had decreased to 18,449; that in the fall of 1942, the number was 7,887, and that near the beginning of this month, March, the number had dropped to 5,686. Since then there have been further heavy losses through induction into active service of the enlisted reserve corps.

"The result is that today the law school enrollments the country over are probably less than one-sixth of what they were in 1938. By next fall the indications are that this will have dwindled yet further, indeed, almost to the vanishing point, for we can anticipate that it will then be restricted, with few exceptions, to men classified in 4-F and to women.

"The drastic restrictions in the capacity of the schools to furnish recruits for the profession, together with the fact that many lawyers are either in the military or civil service of the government, have resulted in a severe shortage of young lawyers. A committee of your Section recently sent out a questionnaire designed to obtain from the schools an estimate of the shortage of young lawyers.

"The replies from 75 schools indicated that these schools, during the year 1942, had requests from government departments for 1,738 lawyers, and that they were able to supply only 427. They had requests from private practice for 1,886; they were able to furnish only 530. From these figures it must be clear, even after making deductions for requests made to more than one school for men to fill the same positions, that a shortage of young lawyers does exist.

"The years just ahead will be a period in which our adherence to the standards we acclaimed in better times will be put to a rigorous test. The substance and spirit of those standards are real, and they constitute values that are precious. Their substance was real before the war, and it is no less real now. It would follow, then, if it was indefensible to send a poorly qualified lawyer into society before the war, it likewise is indefensible now.

"The problem of standards is a paramount issue today. That is the judgment of the Council. We shall meet that problem again but in a different form, when the men come back from the war. Law schools and Bar examination boards alike will be importuned then to make concessions for these men. I should like, particularly, to leave this thought with you as you go back to your homes, the human element will have to be reckoned with and it will have a tremendous appeal. I speak as one who is deeply sensitive to that factor, but we must not lose sight of the substance of things.

"Come what may, we must cling to our sense of values. A poorly qualified lawyer is still one though he be a soldier."

Dean Harno moved the adoption of the following resolution:

> RESOLVED, That the Washington College of Law, of Washington, D. C., the Hastings College of Law affiliated with the University of California, of San Francisco, California, and St. Paul College of Law, of St. Paul, Minnesota, be approved as fully meeting the standards of the American Bar Association.

This was adopted. Mr. Edwin M. Otterbourg spoke trenchantly on the problems, from the point of view of the Committee on Unauthorized Practice of the Law. Mr. John Kirkland Clark, of New York, moved "that we approve the report which Dean Harno has rendered, which I think was exceptionally brilliant, able and forward-looking, and should have the formal approval of this House."

The motion was put to a vote and was adopted by the House.

The House Concludes Its Dispatch of Business

Chairman Robinson of the Section of Criminal Law moved the following resolution, which was adopted by the House:

> RESOLVED, That the House of Delegates directs the Section of Criminal Law to investigate and report to this House:
>
> (1) The scope and effectiveness of the cooperation now existing between the United States and other nations in the administration and enforcement of criminal law;
>
> (2) The extent to which such cooperation is aided or is handicapped by present laws and practices with respect to jurisdiction over criminal offenses as exercised by the various nations and with respect to the extradition of fugitives from criminal justice;
>
> (3) The extent to which the present laws and practices of the United States in dealing with criminal cases which concern both the United States and one or more other nations are proving to be inadequate, conflicting or obsolete because of war conditions or because of modern developments in radio communication and in air transportation; and
>
> (4) The desirability and practicability of participation by the Section of Criminal Law in arrangements, first, for a preliminary or preparatory conference of representatives of the departments and agencies of the United States government which are now charged with law enforcement duties in cooperation with other nations, and, second, for a general conference or congress to which all interested nations might send representatives to consider such matters as possible conventions or treaties for specified cooperation in criminal law administration.

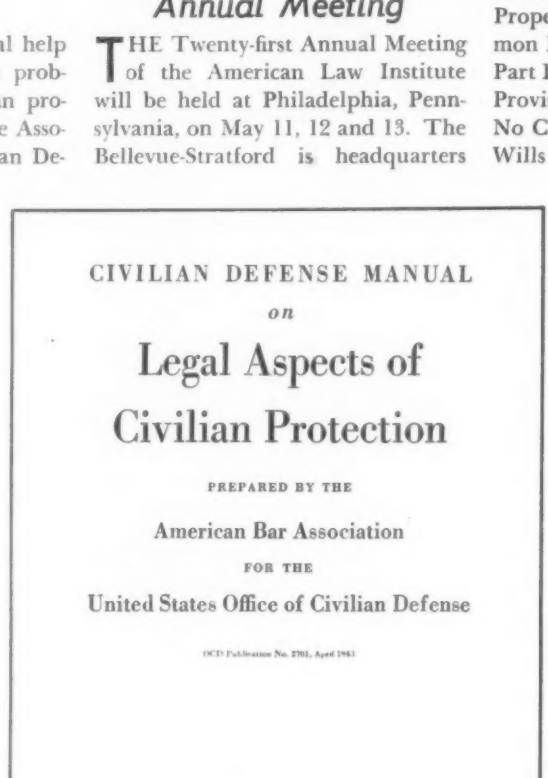
Chairman Lyman, of the Committee on Draft, reported adversely on the adoption of a long resolution submitted through the Committee on the Economic Condition of the Bar. It was felt that existing agencies were dealing with the matters so far as feasible. On motion by Mr. Clark, the resolution was referred back to that Committee for further study.

At 1:35 o'clock Tuesday afternoon, the calendar was completed, and the mid-year meeting of the House thereupon adjourned.

CURRENT EVENTS

A Manual You Should Have

IN an effort to be of practical help to lawyers in the complex problems which arise as to civilian protection in this time of war, the Association's Committee on Civilian Defense has arranged with the OCD to make available to members of the American Bar Association about 10,000 copies of the recently published *Civilian Defense Manual on the Legal Aspects of Civilian Protection*. As long as the supply lasts the Association will send you a copy, on written request to the Headquarters Office of the Association, accompanied by fifteen cents to cover the cost of handling and mailing.


CIVILIAN DEFENSE MANUAL

on

Legal Aspects of Civilian Protection

PREPARED BY THE

American Bar Association

FOR THE

United States Office of Civilian Defense

OCD Publication No. 2701, April 1943

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1943

For sale by the Superintendent of Documents, Washington, D. C., Price 35 cents

Copies of this *Manual* are thus made available to our members because the *Manual* was prepared by the Association at the request of the OCD and bears the sponsorship of the Association and its Committee on Civilian Defense, as to the preparation and contents of the *Manual*. For the Committee, the task of assembling and selecting the material was performed by Mr. Henry S. Fraser, of the Syracuse, New York, Bar. The material was also checked by the General Counsel of the OCD.

Within the 240 pages of this authoritative and timely reference volume will be found for the first time the compilation of the legal material which every lawyer should have on his desk, as to the statutes, regulations and decisions pertaining to property status, personal rights, immunities and liabilities, in the many phases of civilian protection. If you wish a copy of this *Manual*, a prompt request is advisable.

American Law Institute Annual Meeting

THE Twenty-first Annual Meeting of the American Law Institute will be held at Philadelphia, Pennsylvania, on May 11, 12 and 13. The Bellevue-Stratford is headquarters for the meeting, and all sessions and all Institute functions will be held there.

At a meeting held February 23-26, the Council tentatively approved and transmitted to the members of the Institute the following drafts for consideration at this meeting:

Property (2), Proposed Final Draft, covering the Division Servitudes (Easements, Licenses and Promises Respecting the Use of Land).

Property (1), Tentative Draft No. 14, covering Division IV, Social Restrictions Upon the Creation of Property Interests; Part I, The Common Law Rule Against Perpetuities; Part II, Restraints on Alienation and Provisions in Restraint of Marriage, No Contest and Allied Provisions in Wills and Miscellaneous Restrictions.

American Bar Annual Meeting

THE Sixty-Sixth Annual Meeting of the American Bar Association will be held at Chicago, Illinois, August 23 to 26, 1943. Further announcements concerning the meeting will appear in the JOURNAL from time to time.

HEADQUARTERS — DRAKE HOTEL. Detailed information as to types of rooms and rates, at The Drake and other nearby hotels, available to members, will appear in the June JOURNAL. Requests for hotel reservations should be addressed to the Reservation Department, 1140 North Dearborn Street, Chicago, Illinois, giving information as to type of room required, name or names of persons who will occupy same, arrival date, and, if possible, information as to whether such arrival will be in the morning or evening.

Arthur T. Vanderbilt New Law School Dean

ARTHUR T. Vanderbilt, of Newark, New Jersey, has been appointed Dean of the School of Law of New York University, to succeed Dr. Frank H. Sommer, who is retiring after fifty years of association with the institution as student, teacher and administrator.

LETTERS TO THE EDITORS

WE have received two interesting letters on Mr. Armstrong's review of "Mr. Rutledge of South Carolina" in the February number of the JOURNAL.

The author of the book, Mr. Richard Barry, writes:

Mr. Armstrong has analyzed my book and you have presented it so cordially that I wish to thank you both for your attention.

In listing the achievements of Rutledge, the first, according to Mr. Armstrong, is: "For many years he was one of the *de facto* dictators of South Carolina."

This is recorded nowhere except in my volume, and many months of intensive research among original manuscript records, mostly legal, in South Carolina and elsewhere, have established this fact, which lies at the base of Rutledge's unique place and power.

Lack of understanding of that *de facto* dictatorship is one of the chief reasons for Rutledge's obscurity. By utilizing this dictatorship he directed the military winning of the Revolution out of which, with all else that underlay his grasp of creative statesmanship, he became the key factor in the making of the Constitution. If these facts had been heretofore recognized Rutledge's name would be known, but they could not be recognized until the prior fact of his *de facto* dictatorship was known and analyzed.

In the course of my study I queried many lawyers. To none did he "loom large." Within a thousand yards of the office of one lawyer of whom I inquired I found, in Rutledge's handwriting, over two hundred legal documents, study of which led to the answers I sought.

Mr. George L. Buist, of Charleston, South Carolina (a former member of our Board of Governors,) writes:

You may find interest in some random comments from me on the book and the man, from a local and a family point of view.

I doubt that John Rutledge invented the principle of taking cover in battle – the Indians made that contribution to warfare; and I doubt that his contribution to winning the Revolutionary War was as great as Mr. Barry thinks. On the other hand, I have always been of opinion that he contributed more to the writing of the Constitution than did any other five men in the Convention. Charles Pinckney (who was known as "Bad Charlie" – not "Blackguard Charlie" as Mr. Barry says) was a stylist and made valuable contributions of phraseology, not so much of thought. "Bad" is in a sense complimentary, or at least not offensive, a connotation similar to "devilish"; but in the English tradition "blackguard" is an ugly word. I imagine that if anybody had applied the latter term to Charles Pinckney it would have meant "pistols for two, coffee for one".

Mr. Barry's book is pleasingly written and very instructive, but it has some inaccuracies, especially his statement (p. 375) that the only living descendants of Rutledge are three old ladies in Greenville. Charleston is full of descendants of John, of whom I happen to be one. In my branch of the family alone, my grandmother, who was a great-granddaughter of John Rutledge, has thirty-four descendants; as a matter of fact he has quantities of them, including a boy named John Rutledge Cheshire, now a student at Yale.

My ancestor in that line of descent was my great-grandfather, Edward Cotesworth Rutledge. One of my aunts has a miniature of him, painted by Fraser in 1818, showing a very handsome young man with a highly intellectual face. He was an officer in the United States Navy and must have studied professionally the contest between water-borne batteries and land-based batteries at Fort Moultrie. Of course he must have known that his grandfather had taken the responsibility of overriding Gen. Charles Lee and ordering the fort to resist.

Two Views from Letters to the Editors

I

I like to put my JOURNAL in my waiting room for people to pick up and look at when they come in. I will not do that with the April issue.

In the one half page devoted to "There is a time to laugh" there are four stories. Two of them reflect upon the character and honesty of lawyers. This is no laughing matter.

It is true they are told for the entertainment of lawyers. But to the layman who reads them there is lurking in the back of his mind that conviction that many a truth is spoken in jest. The American Bar Association is trying to build up in the mind of the public confidence in the profession. Every conscientious lawyer is trying to help. Stories like the second and third ones help in the opposite direction—by subtly tearing down that confidence.

Reams of arguments can be undone by one funny story. Government propaganda departments recognize that. Saboteurs know it. Lawyers win cases through it. The publishers of the AMERICAN BAR ASSOCIATION JOURNAL should remember it.

II

I have liked the department, "There is a time to laugh." The degree to which some of the journals issued by book publishers and the journals of the local bar associations include legal anecdotes, and the hundreds of bound volumes in which such anecdotes have been reprinted, is evidence that the profession wanted them. My instinct has always been that the JOURNAL should appeal to the informal side of the lawyer's life rather than try to be too much of a Court Gazette.

WAR NOTES

By TAPPAN GREGORY

Of the Chicago Bar

ON March 16, 1943, the War Department issued circular No. 74 providing for the setting up at all Army stations of a Legal Assistance Office. These offices are to be manned by lawyers in the armed forces with such assistance as is needed from lawyers in civilian practice. The plan calls for the cooperation of the Committee on War Work of the American Bar Association in providing the services of civilian lawyers through the war work committees of the different state bar associations. In order to facilitate the attendance of civilian lawyers at these Legal Assistance Offices, effort is being made by the Committee on Coordination and Direction of War Effort to secure provision for adequate gasoline for those lawyers who must use automobile transport in order to reach military stations where these offices are established.

A questionnaire has been sent out to selected representatives of the Junior Bar Conference in the different states for information to be used in the preparation of a compendium of the laws of all the states relating to wills, trusts, powers of attorney and allied subjects of interest to those in the armed forces.

The War Aid Committee of the Cleveland Bar Association in rendering free legal advice to men whose income is materially affected by military service and their dependents will not as a general rule handle divorce cases.

The Connecticut Bar Association has distributed a leaflet to those in the armed forces calling their attention to legal matters of importance to them that should be taken care of before they leave for active service.

The Los Angeles Officer Procurement Board for the War Department solicits applicants between the ages of 35 and 55 for commissions in the Military Government Division of the Provost Marshal General's Department of the Army.

Senate Bill No. 35 introduced in the New Hampshire Senate provides that every male person of the age of 18 years during time of war, of sane mind, may make testamentary disposition of his property. A similar bill is pending in the Illinois legislature.

In Rhode Island a pending bill makes provision to continue in effect every power of attorney given by one engaged in war service until invoked by the grantor or by operation of law. A note of this appears in *American Law and Lawyers.*

The Supreme Court of Washington has held that the Soldiers' and Sailors' Civil Relief Act should be liberally construed in favor of the individual engaged in military service, even though that fact is not a defense to an action.

In the Supreme Court of New York, Special Term, Queens County, it was held that although under the 1942 Amendments to the Soldiers' and Sailors' Civil Relief Act, the benefits of the article of the Act relating to rent and installment contracts, etc. were extended to dependents of persons in military service, complete immunity was not intended and that the Act should be administered as an instrument to accomplish substantial justice.

There was a case in the Supreme Court of New York, Special Term, New York County, in which the petitioner was a member of the Enlisted Reserve Corps. Before the effective date of the 1942 Amendments, his automobile was seized and the court held that this seizure was legal and that while petitioner might obtain a stay of proceedings for the sale of the car, subject to his payment of the balance due at the termination of military service, he was not entitled to return of the car.

The section of the Soldiers' and Sailors' Civil Relief Act providing against the entry of a judgment if there shall be a default of any appearance by defendant, until the filing of an affidavit that the defendant is not in military service, etc. does not apply where the defendant, although in military service appoints his own attorneys and they enter a special appearance in a divorce case to contest the jurisdiction of the court. Nor can the defendant avoid the effect of this by discharging his attorney and moving out of the state. This is held in the Supreme Court of California.

The Circuit Court of Appeals for the Third Circuit rules that a conscientious objector may be classified as such under the Selective Training and Service Act, even thongh he is not a member of a religious sect whose creed forbids participation in war.

It is held in the Supreme Court of New York, Special Term, Queens County, that a landlord is not relieved of his obligation to furnish heat by the withholding from him by federal authorities of fuel oil ration coupons when such refusal is based on the fact that equipment for conversion to coal is available.

On April 13, Chief Counsel, Gasoline Rationing Section of the OPA wrote to the Kentucky Bar Association, attention Henry J. Stites, advising that any person regularly rendering services under War Department Circular 74 is entitled to adequate gasoline for travel to military establishments and that local boards charged with the duty of answering each application as it arises can properly find that the services involved are necessary to the operation or functioning of military establishments. Car sharing must be shown where feasible and it must also be established that no other adequate means of transportation exists.

JUNIOR BAR NOTES

By HUBERT D. HENRY
Secretary, Junior Bar Conference

THE work on the "Compendium on the Laws and Forms relating to problems of Military Personnel" is going forward at a rapid rate. Chairman Joseph D. Calhoun has appointed a state adviser to the Committee on Legal Assistance to the Armed Forces in each state and to these state advisers there has been submitted a list of 71 questions, the answers to which form the basis for the digest of the laws of each state. Subjects to be covered by the Compendium are: Property Rights and Concepts; Conveyances, including those under a Power of Attorney; Trust Instruments; Formalities of Execution of Instruments; Instruments Executed in Foreign Jurisdictions; Recording and Filing of Instruments; Fraudulent Conveyances; Descent; Wills; Age of Competency; Tax Considerations, and Current Legislation Affecting Persons in Service. When the Compendium is complete an attorney should be able, by reference to it, to answer the most common questions relating to the legal problems of the service man.

The state advisers to the Committee on Legal Assistance to the Armed Forces appointed by Chairman Calhoun are: William H. McGowen, Jr., Birmingham, Ala.; Edwin Beauchamp, Phoenix, Ariz.; Howard Cockrill, Little Rock, Ark.; Louis E. Hanchett, Jr., San Francisco, Calif.; Truman A. Stockton, Jr., Denver, Colo.; Vincent A. Theisen, Wilmington, Del.; John Powell, Washington, D. C.; Stanley Richards, Tampa, Fla.; Philip Etheridge, Atlanta, Ga.; Mark O. Roberts, Springfield, Ill.; Gustav Dongus, Indianapolis, Ind.; Kenneth Neu, Des Moines, Iowa; Frank G. Thies, Arkansas City, Kans.; John L. Davis, Lexington, Ky.; A. J. Waechter, Jr., New Orleans, La.; John D. Leddy, Portland, Me.; Donald T. Field, Boston, Mass.; David Morris, Grand Rapids, Mich.; H. Vaughan Watkins, Jr., Jackson, Miss.; Milton Greenfield, Jr., St. Louis, Mo.; Edward T. Dussault, Missoula, Mont.; J. Lee Rankin, Lincoln, Nebr.; Bruce Thompson, Reno, Nev.; Arthur A. Greene, Jr., Manchester, N. H.; Richard J. Fisher, Newark, N. J.; Harry Bigbee, Santa Fe, N. M.; William A. Mason, Charlotte, N. Car.; Oscar Martin, 3d, Springfield, O.; Patrick T. Milloy, Wahpeton, N. Dak.; John S. Carlson, Tulsa, Okla.; John Gearin, Portland, Ore.; Paul Kern Hirsch, Pittsburgh, Pa.; A. Anthony Susi, Providence, R. I.; Carlisle Roberts, Columbia, So. Car.; Carl K. Anderson, Canton, So. Dak.; John McCall Heiskell, Nashville, Tenn.; Fred Much, Houston, Texas; Fred L. Finlinsun, Salt Lake City, Utah; John J. Deschenes, Burlington, Vt.; Willard J. Wright, Seattle, Wash.; Robert L. Merricks, Charleston, W. Va.; Robert W. Haight, Milwaukee, Wisc., and A. G. McClintock, Cheyenne, Wyo. These persons will prepare the digests for their own particular states.

The House of Delegates, at its March 30 meeting in Chicago, approved the resolution presented by the Junior Bar Conference for approval of the purpose of the Junior Bar Conference in carrying out the recommendations for the improvement of the administration of justice in courts trying traffic cases and directing the officers of the American Bar Association to make contact with state and local bar associations with a view to encouraging such associations to cooperate with the representatives of the Junior Bar Conference in carrying out the recommendations.

Steps are now being taken by the Traffic Court Committee to encourage the holding of meetings by municipal law sections or committees, or Junior Bar groups, for the purpose of studying the wartime problems of the Traffic Courts.

Chairman Watson Clay of Louisville, Ky., of the Traffic Court Committee, has appointed the following sub-committees:

Uniform Fines and Penalties—Philip Lewis and Phillip Owens.

Municipal Ordinances and State Legislation—Charles S. Rhyne and Leslie P. Hemry.

War Worker and the Traffic Court—Paul Weiden.

Military Personnel and the Traffic Court—Captain Adrian M. Unger and William J. Barron.

Chairman Watson Clay will organize a campaign in Louisville to improve the Traffic Court situation there in accordance with the recommendations contained in George Warren's book, *Traffic Courts*. It is hoped that the results of this campaign will be given national publicity.

James P. Economos, Chicago, Ill., Secretary of the Committee, addressed a joint session of the Texas Safety Conference and the Texas Police Association in Houston, Texas, on April 27. His topic was "Results of American Bar Association National Survey of Traffic Courts".

The Traffic Court Committee of the Junior Bar Section of the District of Columbia Bar Association, Nathan Lubar, chairman, has made a survey of the Traffic Court situation. The Committee feels that it needs improvement by organizing a Violation's Bureau with uniform fines and forfeits, a composite record system, a full-time prosecutor, a specialist judge in preference to the rotating system now used, and several other desirable improvements. Burton W. Marsh, Traffic and Safety Engineer of the American Automobile Association, was guest speaker at this committee meeting.

Lyman Tondel, Jr., New York City, chairman of the War Readjustment Committee, has mailed out the report of his committee to the presidents and secretaries of all state and local bar associations. This excellent report should receive serious consideration by each of these groups because the time to make effective plans for the future return of the lawyer-soldiers is now.

NOTICE OF ELECTION OF STATE DELEGATES IN 1943

THE Board of Elections announces that, in accordance with Article V, Section 5, of the Constitution, the following nominations have been made by petition for the office of State Delegate to be elected in 1943 for a three-year term beginning at the adjournment of the 1943 Annual Meeting, and for vacancies as indicated:

Jurisdiction	Nominees		Petition Published
Arkansas	A. W. Dobyns	Little Rock	April
Colorado	James A. Woods	Denver	May
Delaware	James R. Morford	Wilmington	March
Georgia	Arthur G. Powell	Atlanta	March
Idaho	A. L. Merrill	Pocatello	April
†Illinois	Tappan Gregory	Chicago	April
Indiana	Harold H. Bredell	Indianapolis	May
	Verne G. Cawley	Elkhart	April
**Louisiana	Pike Hall	Shreveport	April
Maryland	Charles Ruzicka	Baltimore	March
	W. Conwell Smith	Baltimore	April
*Massachusetts	Frank W. Grinnell	Boston	April
Minnesota	Charles W. Briggs	St. Paul	March
Nevada	Charles A. Cantwell	Reno	March
New Hampshire	Louis E. Wyman	Manchester	May
*New Mexico	Herbert B. Gerhart	Santa Fe	May
New York	George H. Bond	Syracuse	April
Ohio	Howard L. Barkdull	Cleveland	March
Oregon	F. M. Sercombe	Portland	May
	Sidney Teiser	Portland	May
Rhode Island	Henry C. Hart	Providence	April
Utah	Robert L. Judd	Salt Lake City	April
*Vermont	Deane C. Davis	Barre	May
West Virginia	Frank C. Haymond	Fairmont	March
*Hawaii	No petition filed		

†For vacancy in term expiring at adjournment of 1945 Annual Meeting.
*For vacancy in term expiring at adjournment of 1944 Annual Meeting.
**Also nominated for vacancy in term expiring at adjournment of 1943 Annual Meeting.

Ballots were mailed on April 24. In order to be counted they must be received by the Board of Elections at the headquarters of the American Bar Association before the close of business at 5:00 P. M. on Friday, May 21, 1943, except in the case of Hawaii from which ballots must be returned by June 25, 1943.

It will be observed that there are contests for the office in Indiana, Maryland, and Oregon. In all jurisdictions a vote may be cast for someone other than a nominee, whose name appears on the ballot, by writing in a name in the blank space provided and placing X in the square opposite. Ballots to be used in the elections to fill vacancies are printed on yellow paper; those to be used in elections for the regular three-year term are printed on white paper.

Only Members who Have Paid Their Dues for the Current Year Will Receive Ballots as They Are the Only Ones in Good Standing and Therefore Entitled to Vote.

Members in Military Service, because of a change in address, may not receive a ballot for the jurisdiction to which they are normally accredited. If they fail to receive a ballot, they are requested to write promptly to the Association office in Chicago and one will be forwarded.

The nominating petitions not heretofore published appear below.

Board of Elections
Edward T. Fairchild, *Chairman*
William P. MacCracken, Jr.
Laurent K. Varnum

NOMINATING PETITIONS FOR STATE DELEGATES

Colorado

To the Board of Elections:

The undersigned hereby nominate James A. Woods, of Denver, for the office of State Delegate for and from the State of Colorado, to be elected in 1943 for a three-year term beginning at the adjournment of the 1943 Annual Meeting:

Messrs. Wilbur F. Denious, Hudson Moore, Richard Tull, Frederick P. Cranston, Noah A. Atler, Samuel S. Chutkow, Morrison Shafroth, Henry W. Toll, W. W. Grant, Lowell White, Robert G. Bosworth, John L. J. Hart, James D. Parriott, L. H. Larwill, Ronald V. Yegge, Harry S. Silverstein, Jr., Wm. V. Hodges, J. G. Holland, Julius M. Friedrich, Howard Roepnack, Warwick M. Downing, Dayton Denious, Edward L. Wood, L. Ward Bannister, John E. Gorsuch, Frazer Arnold, Forrest C. Northcutt, Nicholas Lakusta, Peter H. Holme, Harold D. Roberts, Donald C. McCrerry, Fred W. Mattson, Louis A. Hellerstein, Hyman Berman, A. L. Doud, Arthur H. Laws, Frank N. Bancroft, Walter W. Blood, Percy S. Morris, Philip Hornbein, and Frank C. Myers, of Denver; and

Mr. E. L. Regennitter, of Idaho Springs.

Indiana

To the Board of Elections:

The undersigned hereby nominate Harold H. Bredell, of Indianapolis, for the office of State Delegate for and from the State of Indiana, to be elected in 1943 for a three-year term beginning at the adjournment of the 1943 Annual Meeting:

Messrs. Alfred H. Highland, Louden L. Bomberger, and Fred C. Crumpaker, of Hammond; and

Messrs. Howard P. Travis, Fred B. Johnson, Paul G. Davis, Harvey A. Grabill, Herman W. Kothe, William G. Davis, Paul N. Rowe, V. M. Armstrong, Jacob Weiss, Irving M. Fauvre, Edward J. Fillenwarth, Charles O. Roemler, John K. Ruckelshaus, Harvey J. Elam, Donald L. Smith, Walter Myers, Jr., Perry E. O'Neal, Harry E. Yockey, Sidney S. Miller, Arch N. Bobbit, Henry B. Krug, Merle H. Miller, and Robert D. McCord, of Indianapolis.

New Hampshire

To the Board of Elections:

The undersigned hereby nominate Louis E. Wyman, of Manchester, for the office of State Delegate for and from the State of New Hampshire, to be elected in 1943 for a three-year term beginning at the adjournment of the 1943 Annual Meeting:

Messrs. Alexander Murchie, James B. Godfrey, Franklin Hollis, Frank J. Sulloway, Carl C. Jones, Robert C. Murchie, Charles W. Tobey, Jr., and Robert W. Upton, of Concord;

Messrs. Robert P. Booth, Winthrop Wadleigh, Eliot U. Wyman, John R. McLane, John E. Tobin, Charles H. Barnard, J. Walker Wiggin, Maurice F. Devine, Paul E. Nourie, William H. Craig, Omer H. Amyot, Allan M. Wilson, William J. Starr, Albert White, and Alfred J. Chretien, of Manchester;

Messrs. Alvin A. Lucier and Robert B. Hamblett, of Nashua; and

Messrs. Burt R. Cooper and Justin A. Emery, of Rochester.

New Mexico

To the Board of Elections:

The undersigned hereby nominate Herbert B. Gerhart, of Santa Fe, for the office of State Delegate for and from the State of New Mexico, to be elected in 1943 for the balance of the term expiring at the adjournment of the 1944 Annual Meeting:

Messrs. Robert W. Botts, M. Ralph Brown, Joseph L. Dailey, Richard H. Hanna, Arthur Thomas Hannett, William A. Keleher, George S. Klock, Owen B. Marron, Merritt C. Mechem, Merritt W. Oldaker, George L. Reese, Jr., Pearce C. Rodey, Edwin L. Swope, and Fred E. Wilson, of Albuquerque;

Messrs. C. R. Brice, J. M. Hervey, Clarence Hinkle, and Curtis Hill, of Roswell; and

Messrs. Howard L. Bickley, Edward P. Chase, Carl H. Gilbert, Albert Torres Gonzales, A. K. Montgomery, Joseph M. Montoya, Daniel K. Sadler, J. O. Seth, Paul A. F. Walter, John C. Watson, Edward R. Wright, H. A. Kiker, Arthur Livingston, and Mrs. Mariot Murphy, of Santa Fe.

Oregon

To the Board of Elections:

The undersigned hereby nominate F. M. Sercombe, of Portland, for the office of State Delegate for and from the State of Oregon, to be elected in 1943 for a three-year term beginning at the adjournment of the 1943 Annual Meeting:

Messrs. J. R. Raley, and John F. Kilkenney of Pendleton;

Messrs. Gunther F. Krause, Lofton L. Tatum, William S. Nash, David L. Davies, L. C. Binford, Carl E. Davidson, Fletcher Rockwood, Omar C. Spencer, Charles A. Hart, Dan J. Kenney, Charles R. Spackman, Jr. V. V. Pendergrass, Arthur A. Goldsmith, Allan A. Smith, John A. Laing, Irving Rand, Harold L. Davidson, Arthur H. Lewis, Donald A. Schafer, Louis P. Hewitt, E. M. Morton, Nicholas Jaureguy, John F. Reilly, W. H. Morrison, Roy F. Shields, Ralph A. Coan, and Robert F. Maguire, of Portland; and

Mr. John L. Foote, of St. Helens.

Oregon

To the Board of Elections:

The undersigned hereby nominate Sidney Teiser, of Portland, for the office of State Delegate for and from the State of Oregon, to be elected in 1943 for a three-year term beginning at the adjournment of the 1943

Annual Meeting:

Mr. A. K. McMahan, of Albany;

Messrs. James T. Donald, Joseph J. Heilner, Harold Banta, and Blaine Hallock, of Baker;

Mr. S. M. Calkins, of Eugene;

Mr. Colon R. Eberhard, of La Grande;

Mr. George M. Roberts of Medford;

Messrs. George Neuner, W. T. Vinton, Eugene E. Marsh, and Francis E. Marsh, of McMinnville;

Mr. Will M. Peterson, of Pendleton;

Messrs. Abe Eugene Rosenberg, Herbert Swett, Estes Snedecor, P. M. Cookingham, Gunther F. Krause, Ralph A. Coan, Borden Wood, Wallace Mc Cammat, Robert L. Sabin, Mark W. Matthiessen, Thomas J. White, Robert O. Boyd, Harry L. Raffety, Charles W. Redding, Edward A. Boyrie, Nicholas Jaureguy, Waldemar Seton, Jr., Earl S. Nelson, John C. Kendall, Geo. Black, Jr., Cassius R. Peck, and W. G. Keller, of Portland; and

Messrs. George Rossman, J. O. Bailey, James T. Brand, Percy R. Kelly, I. H. Van Winkle, Willis S. Moore, and Custer Ross, of Salem.

Vermont

To the Board of Elections:

The undersigned hereby nominate Deane C. Davis, of Montpelier, for the office of State Delegate for and from the State of Vermont, to be elected in 1943 for the balance of the term expiring at the adjournment of the 1944 Annual Meeting:

Messrs. H. William Scott and Gelsie J. Monti, of Barre;

Mr. Norton Barber, of Bennington;

Messrs. Frank W. Barber and Osmer C. Fitts, of Brattleboro;

Messrs. A. Pearley Feen, Joseph S. Wool, Sherman R. Moulton, Charles F. Black, Joseph A. McNamara, William H. Edmunds, Bernard J. Leddy, Edward B. Reiter, and Guy M. Page, of Burlington;

Mr. William S. Burrage, of Middlebury;

Messrs. Walter G. Nelson, Jr., William N. Theriault, George L. Hunt, Arthur C. Theriault, and Raymond B. Daniels, of Montpelier;

Messrs. Edwin W. Lawrence, Vernon J. Loveland, Christopher A. Webber, James P. Leamy, Olin M. Jeffords, Harold I. O'Brien, Bernard R. Dick, and Lawrence S. Jones, of Rutland;

Mr. Charles B. Adams, of Waterbury; and

Mr. Henry F. Black, of White River Junction.

BAR ASSOCIATION NEWS

Florida State Bar Association

THE Florida State Bar Association, at its annual meeting in Jacksonville on March 20, elected the following officers: E. Harris Drew, of West Palm Beach, president; Lewis H. Tribble, of Tallahassee, executive secretary; and to the Board of Governors, Dewey A. Dye, of Bradenton; J. Henson Markham, of Jacksonville; Millard F. Caldwell, of Tallahassee; Paul D. Barns, of Miami, and Millard B. Smith, of Titusville.

E. HARRIS DREW
President, Florida State Bar Association

The most important items of business in this one-day session were the approval of a bill to be introduced in the legislature to adopt new civil rules of procedure, based on federal rules, and a vote to push a bill vigorously again in the coming legislature to integrate the Bar.

South Carolina Bar Association

THE South Carolina Bar Association held its annual meeting in Columbia, on March 2 and 3. Although a large number of the members of the association are in the armed forces, a larger attendance was had than was anticipated.

L. W. Perrin, of Spartanburg, was unanimously elected president of the association for the coming year, and in acknowledgment and appreciation, expressed a determination to lead the association to greater service during his term of office. E. W. Mullins, Christie Benet, and John Crews, all of Columbia, were unanimously reelected to serve on the Executive Committee, which has so successfully supervised the affairs of the association during the past year. Archie Beattie, of Columbia, was reelected executive secretary and treasurer.

Partly responsible for the large attendance was the appearance of Colonel Louis A. Johnson, former National Commander of the American Legion and former Assistant Secretary of War and more recently the President's Special Envoy to India, as the keynote speaker of the convention. Colonel Johnson addressed the association and the public on Wednesday night, March 3, on the subject of "The Next Generation and World War III." Colonel Johnson called attention to the great military victories in 1918 and the subsequently squandered peace. He declared that our nation has been made powerful and rich and free and exalted—powerful, not to make subject, but to serve; rich, not to make greater gains, but to be more efficient; free, not simply to exult in freedom, but to make free; and exalted, not to look down, but to lift up. He pointed out that we must handle our economic resources so that no country in the world has any great motive to start off on a mad career of aggression. He closed with the petition "that there may be no World War III, God grant us guidance and vision. In the words of Solomon, 'Without vision, the people perish.' "

At the first session on Tuesday afternoon, President Sidney S. Tison delivered his presidential address. Mr. Tison's remarks were timely, and his thoughts were delivered with customary eloquence. The remainder of the afternoon session was devoted to the reception of memorials to deceased members and the reports of standing committees.

On Wednesday morning, Circuit Judge L. D. Lide, of Marion, one of the state's most respected and admired jurists, entertained the association with a delightfully interesting monologue. Following his remarks, the association elected officers and discussed certain resolutions concerning the affairs of the association during the ensuing year. The secretary was instructed to prepare for publication in the Annual a list of all the members in the armed forces who are, under a by-law of the association, military service members for the duration.

West Virginia Bar Association

UNTIL the annual meeting of the West Virginia Bar Association is held, in October, 1943, the following are its officers: James M. Guiher, of Clarksburg, president; Homer A. Holt, of Charleston, chairman of the executive council; George Richardson, Jr., of Bluefield, Joseph R. Curl, of Wheeling, Robert B. McDougle, of Parkersburg, Judge D. H. Rodgers, of Martinsburg, and S. S. McNeer, of Huntington, members of the executive council; Kent B. Hall, of Wheeling, Harlan M. Calhoun, of Moorefield, Charles C. Wise, Jr., of Charleston, Charles W. Ferguson, of Wayne, Samuel A. Christie, of Welch and Mark L. Jarrett, of Lewisburg, vice presidents; and Bernard Sclove, of Charleston, executive secretary-treasurer.

JAMES M. GUIHER
President, West Virginia Bar Association

Chicago Bar Lends Legal Novels

THE Chicago Bar Association's experiment of a lending library of the lighter literature of the law is proving popular and interesting to the members. Included are: (1) novels in which the plot turns on a point of law; (2) novels describing the professional life of a lawyer or of a judge; (3) novels containing a trial scene; (4) memoirs and miscellany. The Illinois Law Review, in 1908, vol. II, p. 574, published an article by Dean John H. Wigmore entitled "Legal Novels", to which was appended a list of nearly four hundred such novels. This article furnished the idea of the library, and Dean Wigmore is an honorary member of the library committee. Several bar associations that have heard of the experiment are following the example, and from time to time requests are received for information about the lending library. If other bar associations would like to adopt the idea the Chicago committee, of which George F. Anderson is chairman, expresses a willingness to reply to inquiries.

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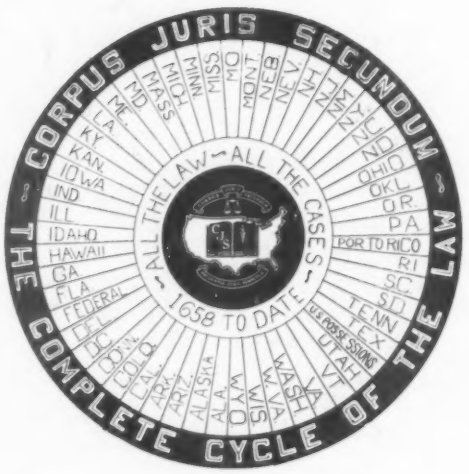

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Published by

The American Law Book Company

NEW YORK

Nathan B. Williams, Esq.,
1010 Vermont Ave.,
Washington, D. C.